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3 CONSTITUTIONAL CONVENTION
4 OF THE
5 STATE OF MARYLAND
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10 Chamber of the House of Delegates
11 State Capitol
12 Annapolis, Maryland
13 December 20, 1967 - 10:00 a.m.
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17 HONORABLE H. VERNON ENEY,
PRESIDENT
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20 Reported by:
C. L. Hurban
21 and
D. Fitzgerald

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P R O C E E D I N G S

December 20, 1967 - 10:05 a.m.

THE PRESIDENT: The Sergeant-at-Arms will clear the aisles and close the doors.

The Convention will please come to order.

The Invocation this morning will be offered by Rabbi Leon Adler, Temple Emanuel of Montgomery County, Kensington, Maryland, Delegate Chabot's Rabbi.

RABBI ADLER: Lord of the Universe, when we are tired and do not wish to think, yet we must speak of that association of men which we call government, we conjure up an image as tired and hopeless as ourselves at that moment of government as a ship of state. By so taking ship, we hope to avoid the responsibility of thinking of what we are doing, but we can do this no more than Jonah when he took ship to avoid his responsibility for prophesying.

We, on a rhetorical ship, and he on his real one, are both at sea on a ship of fools, for man in seeking to avoid responsibility reaps only the whirlwind and his ship sinks like a stone into the depths.

One more thing aboard we have in common with Jonah. When we avoid living up to our responsibilities, we

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1 are breaking a contract -- we, the social contract between
2 man and men which seeks man's good through the instrument
3 of government, and Jonah the divind contract, the covenant
4 between man and God which seeks man's good through the
5 fulfillment of God's will.
6 Give us the strength, we pray Thee, to abide by
7 both these contracts, the social and the divine, and to
8 remember that the social contract, great and noble instru-
9 ment though it be, is but a partial contract and earthly
10 embodiment of the only contract that encompasses all that
11 man can think and feel and do, the ultimate contract the
12 divine covenant between man and his God. Amen.
13 THE PRESIDENT: Roll call.
14 Has every Delegate answered roll call? The
15 Clerk will record the roll call.
16 There being a quorum present, the Convention is
17 in session.
18 The Chair recognizes Delegate Powers, Chairman
19 of the Committee on Calendar and Agenda.
20 DELEGATE POWERS: Mr. President, I move the
21 adoption of today's calendar.

1 THE PRESIDENT: Is there a second?

2 All in favor signify by saying "aye"; contrary,

3 "no". The "ayes" have it, it is so ordered.

4 Reports of Committees. The report of the

5 Committee of the Whole No. 21. The Clerk will read the

6 report.

7 MR. QUILLEN: Report of the Committee of the

8 Whole No. 21. This report covers matters in General Order

9 No. 16; Committee Recommendation No. R&P-1.

10 THE PRESIDENT: The report has heretofore been

11 committed to the Committee on Style, Draft and Arrangement.

12 Are there any o ther reports of Committees?

13 Any motions or resolutions? The Chair hears none.

14 The Chair recognizes Delegate Powers.

15 DELEGATE POWERS: Mr. President, I move the

16 Convention resolve itself into the Committee of the Whole for

17 the purpose of considering General Orders of the Day.

18 THE PRESIDENT: Is there a second? All in favor

19 signify by saying "aye"; contrary, "no".

20 The "ayes" have it. It is so ordered.

21 (Whereupon, at 10:10 a.m., the Convention was

1 resolved into the Committee of the Whole.)

2 (Whereupon, the Mace was removed by the

3 Sergeant-at-Arms.)

4 THE CHAIRMAN: The Committee of the Whole will

5 please come to order.

6 The first item on the calendar for consideration

7 by the Committee of the Whole is Committee Recommendation

8 No. LB-3.

9 The Chair recognizes Delegate Gallagher,

10 Chairman of the Committee on the Legislative Branch, to

11 report the recommendation of the Committee.

12 Delegate Harry Taylor.

13 DELEGATE H. TAYLOR: While Delegate Gallagher

14 is on the way to the rostrum, I would like to exert a

15 personal privilege, if I may.

16 THE CHAIRMAN: State your privilege.

17 DELEGATE H. TAYLOR: They say that behind every

18 man there is a beautiful woman, and behind our President

19 in the gallery this morning is my daughter, Joan, who

20 is here from the University of Arizona observing the

21 convention proceedings, and I trust that the Convention

1 will give her its usual warm welcome. (Applause.)

2 THE CHAIRMAN: D elegate Borom.

3 DELEGATE BOROM: Personal privilege.

4 THE CHAIRMAN: State the privilege.

5 DELEGATE BOROM: I would like to announce that in

6 the balcony above the President are sixty-eight students

7 from Forest Park High School, Baltimore City, with their

8 teachers, Mr. Dettmer, and Mr. Chalker, and at some point

9 during the day -- I hope soon -- the Principal of Forest

10 Park High School, Mr. Norris Weis, will also be in the

11 balcony. He happens to be the brother-in-law of Delegate

12 Frank Robey.

13 THE CHAIRMAN: We are delighted to have you.

14 (Applause.)

15 Delegate Ritter.

16 DELEGATE RITTER: Mr. President, I think we would

17 be remiss if we did not notice in the gallery this morning

18 Cadet Webb, sone of Waverly Webb, Delegate from Prince

19 George's County, who is here visiting and observing the

20 convention today, who is a m emb er of the Augusta Military

21 Academy. He is in the balcony over the speaker's rostrum.

1 THE CHAIRMAN: We are delighted to have him.
2 (Applause.)
3 Delegate Gallagher.
4 DELEGATE GALLAGHER: Mr. Chairman, and ladies
5 and gentlemen of the Convention,I have the honor to present
6 on behalf of the Committee on the Legislative Branch the
7 third, and hopefully the final report of that particular
8 Committee. It covers three aspects of legislative branch
9 activity, they being the question of congressional re-
10 districting, the question of the continuity of government
11 in case of disasters,either natural or man-made, and the
12 third is the question of corporate charters of the State of
13 Maryland which enjoy certain tax exemptions by virtue of
14 the fact that they were enacted prior to 1851.
15 Taking first the question of congressional
16 redistricting, you will remember that when we were presenting
17 LB-2 an amendment was presented calling for congressional
18 redistricting, and this was sent back to the Committee
19 for consideration as a part of LB-3, which was adopted and
20 which you have before you together with the Committee
21 Recommendation comments.

1 Even though it was not the intention of the
2 Committee on the Legislative Branch originally to include
3 a section on congressional redistricting, the events
4 which took place in the Congress the day before we
5 considered the amendment which was proposed here, plus a
6 further study of the history of Maryland and of congressional
7 attempts generally to set up standards has prompted the
8 Committee on the Legislative Branch to reconsider its
9 earlier opinion and to come forth with the suggestion
10 which you have before you.
11 I think Maryland's history with respect to
12 congressional redistricting can be best summarized in a
13 capsule sentence which appears in a pamphlet called
14 "Representation and Apportionment" published by the
15 Congressional Quarterly Service in August of 1966. Maryland
16 was unique enough to prompt a separate article in this
17 particular publication entitled "Redistricting in Maryland",
18 and the lead sentence I think is what would interest us:
19 "Congressional redistricting never easily accomplished proved
20 more difficult in Maryland than in any other state in the
21 country in the 1960's."

1 With this in mind, considering the fact that three
2 attempted congressional redistricting laws, 1961, '63, and
3 '65, never saw the light of day, and that Maryland turned
4 out to be one of the four states of the Union which had
5 ultimately to resort to the courts in order to accomplish
6 congressional redistricting, it was thought that we should
7 attempt within the limits possible to set up some standards
8 and procedure.
9 At the outset, I should say that we recognize
10 that Congress has the right at any time to pass laws
11 pertaining to the same areas which the proposal you have
12 before you refers to which, in effect, would preempt Maryland
13 on any constitutional or statutory provisions, so that
14 we do, in suggesting to you the fact that there be
15 congressional districting constitutional law in Maryland,
16 we do run the risk of having the area preempted. However,
17 that risk does not seem too great on the basis of what has
18 occurred in recent times.
19 The Federal Congress, since 1929, has really
20 not had any standards of any genuine application with
21 respect to congressional districts. Prior to that time,

1 there were standards. A congressional district had
2 to be compact and contiguous. Thereafter, as the Supreme
3 Court cases evolved, they had to be substantially equal
4 in population.
5 The Supreme Court of the United States is still
6 grappling with what constitutes equal population for
7 congressional districts. It seems fair to say that it
8 requires a greater standard of equality, if I can use that
9 term, for the Congress and congressional districts that
10 it requires for state districts.
11 The most recent case was decided several weeks
12 ago and involved Ohio, where the districts varied a total
13 of 31 percent. This was held to be unconstitutional by the
14 majority of the Supreme Court without an opinion. There
15 was a two-man dissent which attempted to evaluate the reasons
16 for the ruling of the six judges in the majority.
17 Now, what we have proposed to do with 3.03(b) is,
18 of course, first of all to eliminate single member districts.
19 That is the only area in which Congress has legislated thus
20 far. On November 30 of this year, it amended a special bill,
21 a private bill, to provide that there shall be no at-large

1 elections except in those states which have elected all
2 their congressmen at-large prior thereto.
3 Now, of course, when we require in the proposed
4 language of 3.03(b) that the State be divided into
5 congressional districts, we are consistent with what the
6 Congress has agreed to thus far.
7 I think the question of "compact and contiguous"
8 is one of historical significance more than any other
9 thing. We know what something is when it is contiguous.
10 I am not sure that anyone knows how one can effectively
11 apply the requirement of compactness.
12 The thing that I think would interest the
13 Committee of the Whole is the sentence beginning on -- the
14 second sentence of 3.03(b), "The difference between the
15 populations of the largest and smallest congressional
16 districts in the State shall not exceed ten percent of the
17 mean population of all congressional districts."
18 That means that once the number of congressmen
19 has been determined for the State, that that number is
20 divided into the number of people in the State where you get
21 the mean population of an exact congressional district

1 which would be exactly equal.

2 Applying the standard of ten percent, it means

3 that you may bo a total of ten percent between the high

4 and the low. It would be five percent high, five percent

5 low, or seven and three, or six and four.

6 Now,this may not seem like a large number, this

7 ten percent allowable deviation, but when you consider

8 that in 1960 the mean population of a congressional district

9 was 388,000, this means applying the ten percent figure that

10 you could have, under the proposed constitutional require-

11 ment here, a variation of almost 39,000 persons for each

12 congressional district. This would be the area of

13 flexibility, so to speak.

14 Taking the Congressional Quarterly standards

15 for 1970, which does not approximate as great a population

16 for Maryland as some of our other sources, using even their

17 figures each congressional district on an exact mathematical

18 basis would have roughly 480,000 people, so applying the

19 ten percent allowable deviation you would have, therefore,

20 a difference of 48,000 between the high and the low

21 congressional district.

1 Quite naturally, an inquiry will be made as to
2 why the Committee decided upon ten percent, why it
3 decided upon a percentage at all, when in the legislative
4 session and the session having to do with the districts
5 for the purposes of the General Assembly we did not use
6 a percentage, although we indicated we felt that fifteen
7 percent would be the maximum acceptable in isolated cases.
8 I think the reason is because of the much larger size of a
9 congressional district, the fact that a larger percentage
10 really allows you a greater number of people for flexibility
11 purposes.
12 Now, it is quite true that Congressman Cellers'
13 bills which have been submitted regularly to the Congress
14 and House since 1951 have generally called for a fifteen
15 percent deviation from the mean. However, in recent times
16 the Senate has been reducing that figure to ten percent, and
17 it appears that if a percentage is ever adopted that ten
18 prcent will probably be the percentage agreed upon.
19 I am not suggesting to you that the prospects
20 of Congressional final decision in this area are at hand.
21 In talking to some of the Members of the Congress, I think

1 it is fair to say that there will be continued stalemates.

2 I think it is interesting to note that Congress--

3 that is, the House -- has been quite anxious to forestall

4 litigation in this area, and consequently has approached

5 the problem of congressional redistricting both from a

6 temporary point of view and from a permanent.

7 Congress has attempted, in the House, at least,

8 to provide for variations as high as thirty percent,but

9 saying that after 1972 the House figure shall be a fifteen

10 percent one. This has not met with any approval in the

11 Senate, and consequently you have had the stalemate of

12 which I have spoken and which I suspect is going to continue

13 to exist for some time.

14 Now,we require under the constitutional provision

15 here that there be congressional redistricting in 1972 and

16 every tenth year thereafter. There will be no question,

17 therefore, that the decennial census figures will be at

18 hand for the purpose of determining what the districts shall

19 be.

20 You will note, too, that we used the identical

21 sentence with respect to natural boundaries and boundaries

1 of political subdivisions. We have required that due
2 regard shall be given to natural boundaries and the
3 boundaries of political subdivisions, but in this particular
4 context we would not allow any deviation over and above the
5 ten percent at all.
6 I think I should point out here that the special
7 three-judge court, which provided the congressional districts
8 under which we operate today, actually have a flexibility
9 of less than two percent of deviation from the mean, so
10 that in setting the ten percent we are in reality providing
11 an additional eight percent within which to redraw
12 congressional districts in 1972.
13 Now, the Committee decided that we would follow
14 somewhat, to some extent, the commission procedure that we
15 employed in the section on the General Assembly itself, and
16 that is to say that the Committee on Legislative Re-
17 districting, which you will remember would contain four
18 memb ers from each party having been designated by the
19 respective party leaders in the House and the Senate, for
20 a total of 68, plus the Governor's appointee, who shall
21 be chairman for the tie-breaker, the ninth party, is the

1 commission which does the redistricting for the General
2 Assembly. This Commission hopefully would gain some
3 stature and prestige and expertese, and therefore we have
4 conferred upon it the duty of initiating congressional
5 districting under 3.03(c). In any year in which there is
6 to be congressional redistricting that commission will
7 submit to the Governor, who in turn shall send it to the
8 General Assembly, a plan for congressional redistricting.
9 Now,we have required that the General Assembly
10 take it and either enact it into law or enact a redistricting
11 plan of its own. We feel that we cannot go any further
12 than this and attempt to confer jurisdiction upon the
13 Court of Appeals or any court whatsoever because of the
14 complications that arise under the constitution.
15 Ultimately it would appear, as we have pointed
16 out before, that the responsibility for drawing the
17 districts is in the General Assembly, and I don't think it
18 would be wise to put any of that responsibility anyplace
19 else, although we recognize that the Federal courts in
20 Maryland have taken this responsibility on in 1966.
21 Here I should say with respect to natural

1 boundaries that we would anticipate that one could jump
2 the Chesapeake Bay in order to keep a single congressional
3 district. In this respect we say that we differ from
4 what we have urged with respect to legislative districts,
5 General Assembly districts, where we do not contemplate
6 it would or should be necessary because of the smallness
7 of those areas, or for other reasons as well, but here we
8 would anticipate the possibility of jumping the Bay, if it
9 became necessary, although we believe that when we have
10 said that due regard shall be given to natural barriers
11 this should not be done lightly, that any of these natural
12 barriers should be jumped.
13 That concludes my comments on congressional
14 districting. We are not schedule, according to the
15 Congressional Quarterly, to get a ninth congressman in 1970,
16 although there does still appear to be some possibility that
17 we could obtain a ninth congressman. Under the constitutional
18 language here and under the Acts of the Congress, the State
19 would have to be redistricted. We could not have this
20 ninth congressman if we got him to run at large. We would
21 have to have districts throughout for all congressional

1 seats.

2 Addressing myself now to the question of

3 continuity --

4 THE CHAIRMAN: Delegate Gallagher, I think it

5 might be helpful if we take up the questioning on each of

6 the three subjects because they are so diverse.

7 Are there any questions of the committee chairman

8 with respect to Congressional districting? Delegate

9 Gilchrist.

10 DELEGATE GILCHRIST: Mr. Chairman, is there any

11 real necessity for the inclusion of a congressional

12 districting provision in our constitution?

13 DELEGATE GALLAGHER: I think the necessity

14 arises from the woeful lack of success which the General

15 Assembly has enjoyed, or not enjoyed, in its past attempts.

16 I think if we provide them with guidelines that one would

17 anticipate that if they acted at all they would act within

18 the constitutional realm which hopefully would keep them

19 out of the courts. I think that would be the purpose.

20 THE CHAIRMAN: Delegate Gilchrist.

21 DELEGATE GILCHRIST: Is it not true that Article I,

Section 4, of the Federal Constitution places the entire

1 responsibility for congressional districting in the
2 legislature subject to guidelines which may be laid down
3 by Congress, itself?
4 DELEGATE GALLAGHER: I think the language which
5 you refer to can be interpreted that way. However, I
6 don't read the Constitution of the United States as
7 prohibiting Maryland from putting into its constitution
8 what we attempt to do here.
9 Congress apportions and the State districts, and
10 it appears to me that a state may set down constitutional
11 guidelines not inconsistent with Congress or in areas
12 where Congress has not preempted the field. As you
13 suggest, if Congress should pass statutory legislation
14 covering these areas, these constitutional areas would
15 fall.
16 THE CHAIRMAN: Delegate Gilchrist.
17 DELEGATE GILCHRIST: Would we not then be better
18 off if we did not write a provision which had the
19 potentiality of being inconsistent with Congressional
20 action?
21 DELEGATE GALLAGHER: We might, but the point was

1 made during earlier debate that if we don't put constitutional
2 provisions in that what we are trying to do, or what we
3 will allow the General Assembly to do is to pass the least
4 acceptable kind of Congressional redistricting,so this
5 would be an attempt to hold them up to a higher level of
6 performance than might be expected of them if there were no
7 state constitutional standards.
8 THE CHAIRMAN: Delegate Gilchrist.
9 DELEGATE GILCHRIST: But it still remains a
10 strong possibility that the standards which are set
11 forth in this section may be totally inconsistent with
12 standards which are adopted by Congress.
13 DELEGATE GALLAGHER: You are quite right, and I
14 would say this, however, that since there has been nothing
15 of significance in the field since 1929, the Congressional
16 Redistricting Act, 38 years have gone by with Congress
17 failing to act and there has been a continuous effort
18 since 1951 on the part of Congressman Celler to do
19 something, but nothing significant has been done there
20 and nothing would have been done at all, it seems to me,
21 without the decision of the Supreme Court in Westbury v.

1 Sanders, where it was held that the populations of the
2 Congressional Districts had to be substantially equal.
3 THE CHAIRMAN: Delegate Marion.
4 DELEGATE MARION: Delegate Gallagher, you point
5 out that Congress has just enacted a law which would
6 prohibit at-large Congressional Districts, at least for the
7 State of Maryland. It doesn't apply to every single state,
8 I take it; is that correct?
9 DELEGATE GALLAGHER: That is correct. Originally
10 they exempted Hawaii and New Mexico specifically, but
11 dropped them out eventually.
12 THE CHAIRMAN: Delegate Marion.
13 DELEGATE MARION: If that law should subsequently
14 be repealed so that there is no federal prohibition against
15 an at-large Congressional District, would it be your
16 understanding that the language provided in Section 3.03(b)
17 would so prohibit in Maryland an at-large Congressional
18 District?
19 DELEGATE GALLAGHER: That would be my under-
20 standing.
21 THE CHAIRMAN: Delegate Marion.

1 DELEGATE MARION: And if Congress were to enact
2 a law establishing the maximum permissible deviation between
3 the largest and the smallest district, and assuming they
4 were to set the figure at fifteen percent, would it be
5 your impression that that would take precedence over the
6 ten percent figure, or would the fact that Maryland
7 by its constitution required a tighter standard take
8 precedence to that extent over the Federal law?
9 DELEGATE GALLAGHER: My understanding would be
10 that Maryland's ten percent would fall and that the
11 Congressional fifteen percent, the Act of Congress, would
12 become the law for Maryland as it would for the rest of the
13 States of the Union, even though it was more restrictive.
14 THE CHAIRMAN: Delegate Marion.
15 DELEGATE MARION: Would there be anything in
16 this section, for example the provision in the first line
17 that the State shall be divided by law, which would in
18 your judgment prevent a three-judge Federal court, as it
19 did a year or so ago, from drawing the districts, if they
20 were not otherwise drawn by law in Maryland?
21 DELEGATE GALLAGHER: No, I believe that the

1 General Assembly could fail to exercise its responsibility
2 in a constitutional fashion, and that a set of circum-
3 stances might arise where a Federal District Court would
4 be forced, because of the exigencies of time,to attempt
5 the redistricting itself, but I would hope that this would
6 go a long way towards thrusting the ultimate responsibility
7 on the General Assembly.
8 THE CHAIRMAN: Delegate Marion.
9 DELEGATE GALLAGHER: I might say that within two
10 years after the Westbury v. Sanders case, 27 states acted
11 to redistrict their Congressional areas virtually voluntarily.
12 Maryland was only one of four which found that its ultimate
13 discharge of responsibility had to be vested in the courts
14 rather than on the General Assembly.
15 THE CHAIRMAN: Delegate Marion.
16 DELEGATE MARION: But there is no authority in
17 thisthis section for the Court of Appeals of Maryland to
18 assume the responsibility if the Legislature fails to
19 act, would that be correct?
20 DELEGATE GALLAGHER: That is correct. We
21 toyed with the idea of having the Court of Appeals do this,

1 confer original jurisdiction on it,but we decided there
2 were so many problems in that we didn't want to get into
3 Federal-State conflicts. We didn't feel that it would
4 be wise to attempt to do that. Consequently, I would
5 suspect that you could go either to the state courts or to
6 the Federal courts for relief -- probably the Federal
7 courts are the best avenue of relief for Congressional
8 Districts. At least they are the most traveled.
9 THE CHAIRMAN: Delegate Boyer.
10 DELEGATE BOYER: Delegate Gallagher, the Ohio
11 case to which you referred was probably Lucas v. Rhodes, was
12 it not, in the Supreme Court?
13 DELEGATE GALLAGHER: Yes. sir.
14 DELEGATE BOYER: Which was decided, I believe,
15 December 13 -- just recently.
16 DELEGATE GALLAGHER: That is correct.
17 DELEGATE BOYER: Could you tell us, please,
18 what the reasoning of the court was in striking down the
19 unofficial guesstimate used by the Ohio Legislature in
20 redistricting?
21 DELEGATE GALLAGHER: I will to the best of my

1 As I said, the six judges who voted to strike
2 down the decision of the special three-judge court didn't
3 file an opinion with their decision. There is a two-judge
4 dissenting opinion which would indicate that there were
5 two things wrong -- possibly one of them being the 31
6 percent deviation from the mean, and the second the use of
7 unofficial population estimates.
8 Reading from the decision of the majority below,
9 they said, "In the 1964 Special Session of the Ohio
10 Legislature which drafted the redistricting plan here under
11 scrutiny, that body relied upon statistics supplied by
12 several agencies throughout the State of Ohio in order
13 to project population trends likely to result in equal
14 redistricting by the time elections were held in 1966."
15 The problem there was they used Chamber of
16 Commerce Figures, the Columbus Area Chamber of Commerce
17 research staff for Franklin County; they used figures from
18 the Ohio Department of Development, which I am not sure
19 is an official agency of the State of Ohio, and they used
20 figures from the Citizens League for Cayoga County, so that
21 the special three-judge court in Ohio relied at least

1 very significantly upon official figures, and I think that
2 was probably one of the main reasons why the Supreme
3 Court reversed.
4 THE CHAIRMAN: Delegate Boyer.
5 DELEGATE BOYER: These unofficial figures were
6 probably the best the State of Ohio could come up with
7 at that time. Would it be safe to say that computerized
8 figures would be official or unofficial?
9 DELEGATE GALLAGHER: In my opinion,any
10 redistricting commission or any General Assembly could not
11 use any Chamber of Commerce or comparable organization
12 figures because most of these are designed for ballyhoo
13 and attracting industry, and certainly give you an
14 exaggerated point of view.
15 You would have to go to some official state
16 agency like the State Planning Department.
17 THE CHAIRMAN: Delegate Boyer.
18 DELEGATE BOYER: Would it not be true that
19 truly the only official figures would be the Census figures?
20 DELEGATE GALLAGHER: No, the only official Federal
21 population figures are the Census figures, which are

1 presently decennial in nature, and may be on a five-year
2 basis, but it is possible, and we have determined that
3 the State can give you population figures procured from
4 official state records.
5 THE CHAIRMAN: Delegate Boyer.
6 DELEGATE BOYER: Just one last question along
7 these lines.
8 You say we have determined -- who is this?
9 DELEGATE GALLAGHER: Well, the Committee, the
10 Committee staff by talking to the State Department of
11 Planning.
12 THE CHAIRMAN: Delegate Boyer.
13 DELEGATE BOYER: If I may ask a second line of
14 approach here, do I understand that the Congressional
15 redistricting would be effective in 1972, and may I inquire
16 why we reapportion or redistrict congressional districts in
17 1972 and yet we are all going to redistrict the General
18 Assembly in 1970 on unofficial figures?
19 DELEGATE GALLAGHER: I think the answer is
20 fairly obvious. We are operating today in a General
21 Assembly whose population basis is the 1960 Federal Census.

1 Consequently, we are certainly pretty far from any actual
2 view of population as it exists today. There have been
3 tremendous shifts in population.
4 I think that the deviations in the General
5 Assembly based even on the 1960 Census are in the 60
6 per cent category, whereas the Federal Congressional
7 Districts which were redistricted in 1966 by a federal
8 court, while it is true they used 1960 Census figures
9 the deviations there are less than two per cent, so
10 certainly the likelihood of malapportionment is much greater
11 for the General Assembly as it exists today than it is with
12 congressional redistricting.
13 Now, I am not arguing with you that some
14 very unfortunate things were done by the Federal court
15 in the 1966 case, but it has the one overriding virtue
16 of being substantially equal in population. It also
17 preserved a few congressional seats, whose members happened
18 to be chairmen of the committees.
19 THE CHAIRMAN: Delegate Fox.
20 DELEGATE FOX: Delegate Gallagher, would
21 it be possible for Section 303(c), the congressional

1 redistricting procedure, to stand even though Section
2 303(b), that tries to set a rigid standard, should be
3 deleted?
4 I notice there is no date in Section 303(c), and
5 there is one in 303(b), which is why I ask the question.
6 THE CHAIRMAN: Delegate Gallagher.
7 DELEGATE GALLAGHER: Yes, it would be possible
8 for 303(c) to stand by itself, but it would be a wobbly
9 kind of stand.
10 THE CHAIRMAN: Delegate Koss, did you have a
11 question?
12 DELEGATE KOSS: Chairman Gallagher, I was
13 interested in what the implications of the inclusion are
14 with reference to court resort. Without a provision in
15 this constitution, would the federal courts be the only
16 avenue for redress?
17 THE CHAIRMAN: Delegate Gallagher.
18 DELEGATE GALLAGHER: No, I don't think so.
19 I think you could go to the state courts as well.
20 THE CHAIRMAN: Delegate Carson.
21 DELEGATE CARSON: Chairman Gallagher, the last

1 congressional district section proposed, which was with-
2 drawn, as I recall had some mention of the Chesapeake Bay.
3 Is that correct?
4 DELEGATE GALLAGHER: I can't quite remember
5 the events of that hectic evening, but I will rely upon
6 your recollection.
7 THE CHAIRMAN: Delegate Carson.
8 DELEGATE CARSON: I recall that they did.
9 The language you now have in two sentences is
10 "Each congressional district shall consist of adjoining
11 territory and be compact in form. Due regard shall
12 be given to natural boundaries and boundaries of political
13 subdivisions."
14 May I ask you in the light of that language
15 is it the intent of your Committee that so far as the
16 Eastern Shore is concerned a congressional district would
17 have to go the northern route through Harford, or would
18 it be flexible and the General Assembly could also go the
19 southern or middle route if the election district had to be
20 expanded?
21 THE CHAIRMAN: Delegate Gallagher.

1 DELEGATE GALLAGHER: We don't intend to impose
2 any rigid, non-elastic rules by virtue of the language
3 that we have used here with respect to the exact land
4 area. We think this is a situation which is more
5 legislative than constitutional in nature. It would be up to
6 the districting commission and ultimately to the General
7 Assembly which has the last word.
8 You will note that in the congressional
9 districting section we do not provide that the commission
10 plan would become law in the event that the General
11 Assembly fails to enact a new one.
12 We believe that the ultimate responsibility
13 must be upon the General Assembly and no commission plan
14 can automatically become law unless it is specifically
15 enacted into law by the legislature itself.
16 THE CHAIRMAN: Is there any further question,
17 Delegate Carson?
18 DELEGATE CARSON: No, thank you, Mr. Chairman.
19 THE CHAIRMAN: Are there any other questions
20 of the Committee Chairman?
21 Delegate Gallagher, the Chair has one question

1 in the light of your answer to the question asked by
2 Delegate Fox.
3 You indicated that if Section 303(b) were deleted,
4 Section 303(c) could stand alone, although somewhat
5 shakily.
6 If that should happen, what would determine,
7 under 303(c), the year in which congressional redistricting
8 is to be effective? I am reading from lines 8 and 9.
9 DELEGATE GALLAGHER: I think, Mr. Chairman,
10 that that would depend upon the will of the legislature
11 as expressed in a resolution or some other indication
12 that they plan to take redistricting up. Perhaps it
13 might also be a court order to redistrict.
14 THE CHAIRMAN: It would not be contemplated
15 in that event that the Commission could be a self-
16 starter, so to speak?
17 DELEGATE GALLAGHER: No, sir. In order to make
18 it a self-starter, we would have to provide additional
19 language in 303(c). It is interesting to note that
20 prior to Westbury v. Sanders, some states had not
21 redistricted for as long as 40 years. Consequently,
I think we would need more than the language in 303(c)

1 to make it a self-starter.

2 THE CHAIRMAN: Delegate Singer.

3 DELEGATE SINGER: I have one brief question

4 on the last sentence of 303(d) where you state that

5 the standard should be established immediately prior

6 to statewide general election in 1972.

7 I was wondering why immediately and not just

8 prior. It seems to me this possibly could be

9 restrictive.

10 DELEGATE GALLAGHER: Well, we wanted to catch

11 the Federal decennial statistics which will be available

12 in December of 1971. If any earlier figures were

13 used other than the Federal decennial census figures,

14 it would be most unfortunate, considering they would be at

15 hand.

16 THE CHAIRMAN: Delegate Gallagher, I am not

17 sure that you caught the full import of Delegate Singer's

18 question.

19 What would be meant by "immediately"? Could

20 it be as short as one day?

21 DELEGATE GALLAGHER: No, sir. It would certainly

1 have to be sufficient in time to take care of the
2 primary election as well as the general, because the
3 would-be candidates would want to know fairly early where
4 they stood. Since you don't get the federal figures,
5 the final federal figures on census tract basis until
6 December of 1971, it would seem to me that the
7 Commission would have to go to work as soon as those
8 figures were available and get them into the General
9 Assembly promptly, and hopefully the General Assembly
10 would then take action so that there would be an oppor-
11 tunity to set up congressional districts for the primary
12 election.
13 THE CHAIRMAN: So that the Committee would
14 intend that the words, in lines 23 and 24, "immediately
15 prior to the statewide congressional general election"
16 would mean any time after the Census figures were available
17 and prior to the primary election?
18 DELEGATE GALLAGHER: Yes, sir, that is correct,
19 between the time of the 1970 Federal Census count being
20 available and the primary election.
21 THE CHAIRMAN: Are there any other questions?

1 (There was no response.)

2 THE CHAIRMAN: The Chair hears none.

3 Would you please proceed, then, with the

4 Committee's report on the next subject?

5 DELEGATE GALLAGHER: The next section having

6 to do with continuity of government during emergency is

7 one which has become fashionable in recent constitutions.

8 The purpose of this is to provide for continuity

9 of government in the event of an emergency,

10 disaster, or enemy attack, and for continued operation

11 of government.

12 The reason it is necessary to include this

13 section in the constitution is that the Committee contem-

14 plates that in times of disaster it would be necessary

15 to suspend some constitutional operations, some

16 constitutional procedures. I am not talking about

17 the area of personal rights, but I am talking about

18 in the area of office holding.

19 Let us suppose that something happened to

20 Annapolis while the General Assembly was in session

21 and that a large number of the members of the General

1 Assembly were killed. We would anticipate that the
2 General Assembly would, prior to such a disaster, indicate
3 that in the event that a quorum were not alive or could
4 not be called there would be some other method of operating
5 the General Assembly.
6 We would anticipate that if all the constitutional
7 officers were wiped out so that the orderly filling of
8 vacancies could not take place in a disaster that the
9 General Assembly would pass legislation prior to such
10 an emergency saying in such event the governor shall be
11 selected under these circumstances or the governor shall
12 be the man who holds office in this particular area.
13 The same thing for the operation of government --
14 if you can't get a General Assembly together and you can't
15 appropriate funds because of a disaster, government would
16 be stalemated, and we would contemplate therefore that
17 the General Assembly would pass laws which, despite
18 constitutional provisions, would in an emergency allow
19 the disbursement of state monies, even though it could not
20 otherwise be constitutionally accomplished.
21 We debated the inclusion of this at some

1 length. I might say we had great pressure on us from the
2 state civil defense organization to pass a very lenghthy
3 kind of emergency constitutional provision, but we felt that
4 we wanted to reduce it to a skeleton form, to merely
5 provide that the General Assembly could pass legislation
6 in these two areas anticipating a disaster, and at the
7 same time in so doing set aside or allow the possibility
8 to set aside some constitutional procedures.
9 If we didn't include this in the constitution
10 then the General Assembly could do nothing to anticipate
11 an emergency except as would be allowed by the constitution.
12 If this would be the case, the General Assembly might find
13 that it could not adequately handle an anticipated disaster.
14 Consequently, we feel the language is necessary.
15 I might say the Committee went back and forth
16 three or four times before it ultimately decided to do it.
17 This language in 3.19 is the best coming together of
18 language we could arrive at after studying the Rhode Island
19 and New York constitutions in both of these regards.
20 We felt that this was the best method of approaching the
21 problem.
THE CHAIRMAN: Are there any questions of

1 the Committee Chairman?

2 (There was no response.)

3 THE CHAIRMAN: The Chair hears no questions.

4 The Chair has one question, Delegate Gallagher,

5 with respect to the second sentence, and the same

6 language is used in the first sentence.

7 What is meant by the phrase "continuity of state

8 and local public offices and governmental operations"

9 insofar as provisions of the constitution are concerned?

10 DELEGATE GALLAGHER: The meaning of the language

11 is that the General Assembly may provide who shall exercise

12 powers with respect to state and local public offices in the

13 event that all applicable provisions which designate

14 who shall succeed to those offices have been exhausted,

15 and yet there be no one to succeed to those offices.

16 THE CHAIRMAN: Is it limited to that, or could

17 the General Assembly provide by law that the provisions

18 of the constitution with respect to succession of

19 the governor should be suspended during the period of an

20 emergency.

21 DELEGATE GALLAGHER: No, sir, we do not

1 anticipate that. We anticipate that all constitutional
2 provisions with respect to who shall succeed the one
3 office must first be exhausted before the General Assembly
4 could pass legislation which would have an effect upon the
5 filling of those offices in the event of a vacancy or
6 inability to carry them out.
7 THE CHAIRMAN: Would it be contemplated that
8 the legislature, by such a public general law, could
9 provide for the suspension of the provisions of the
10 constitution as to the vote required to pass an act of
11 the General Assembly?
12 DELEGATE GALLAGHER: Yes, sir, it would.
13 THE CHAIRMAN: Would it be contemplated
14 that they could provide for suspension of the veto power
15 of the governor?
16 DELEGATE GALLAGHER: It would not, if there
17 would be a governor in office, someone holding the office.
18 THE CHAIRMAN: Would it be contemplated
19 that they could provide that during the period of the
20 emergency monies could be expended out of the state
21 treasury without the warrant of the comptroller or check

1 of the treasurer?

2 DELEGATE GALLAGHER: Yes, sir, it would, if those
3 persons could not perform their duties within the time
4 necessary or were not present or presumed to be dead or
5 disabled.

6 THE CHAIRMAN: In other words, would it be fair
7 to say that the intent of the second sentence of this section
8 is that the General Assembly could, by law, provide for
9 the suspension of constitutional provisions only to the
10 extent that by reason of the emergency the constitutional
11 provisions could not be given effect?

12 DELEGATE GALLAGHER: Yes, sir, that is
13 correct.

14 THE CHAIRMAN: But that the constitutional
15 provisions could not be suspended to the extent that
16 notwithstanding the emergency they could be given effect?

17 DELEGATE GALLAGHER: That is correct.

18 THE CHAIRMAN: Are there any other questions?
19 Delegate Bennett.

20 DELEGATE BENNETT: Delegate Gallagher, further
21 with regard to the questions that the Chairman put to you,

1 Section 9 of the Personal Rights reads as follows, as you
2 perhaps recall:
3 "The right of the writ of habeas corpus and
4 the provisions of this constitution shall not be suspended."
5 Now, aren't these two in conflict?
6 THE CHAIRMAN: Delegate Gallagher.
7 DELEGATE GALLAGHER: No,sir, I don't think so.
8 We specifically disclaim any intention that this
9 Section 319 could in any way override any of the personal
10 rights guaranteed in the constitution, particularly the
11 right of the writ of habeas corpus.
12 In other words, we tried to limit ourselves
13 to two areas -- that is to say, one is the filling of
14 governmental offices, and the other is continuity of
15 operation of government.
16 THE CHAIRMAN: Delegate Bennett.
17 DELEGATE BENNETT: I am just wondering whether
18 the Committee on Style, with its enormous tasks, might
19 try to reconcile these and perhaps suggest an amendment
20 that during a period of emergency this provision of yours
21 might apply.

1 THE CHAIRMAN: Delegate Gallagher.

2 DELEGATE GALLAGHER: We have specifically
3 limited the time within which 2 shall apply when
4 we say "during the period of any such emergency only".
5 We try to hold it down so that you don't get a martial
6 law situation where you just go on and on and there is
7 no termination date as to when these suspensions come to
8 an end.

9 THE CHAIRMAN: Delegate Gallagher, could I
10 illustrate your point by another question, and correct me
11 if I am wrong.

12 Is it contemplated the General Assembly could
13 by law provide, for instance, that in an emergency judges,
14 temporary judges could be appointed in some manner other
15 than the manner provided in the constitution but could not
16 deprive a citizen of his right to due process under the
17 Declaration of Rights?

18 DELEGATE GALLAGHER: That is correct, sir.
19 We don't anticipate any allowance of invasion of personal
20 freedoms or rights as a result of this particular section.
21 This goes to the procedure for the operation of government

1 as a process and to the filling of governmental offices.
2 THE CHAIRMAN: Are there any other questions?
3 Delegate Lloyd Taylor.
4 DELEGATE LLOYD TAYLOR: Delegate Gallagher,
5 in reference to your last two words, "governmental
6 operations", what do you mean by that, exactly,
7 "governmental operations"?
8 DELEGATE GALLAGHER: We mean the ordinary
9 day-to-day conduct of government.
10 DELEGATE LLOYD TAYLOR: Do you mean, say,
11 the police operation, or operation of the police depart-
12 ment? Would that be included?
13 DELEGATE GALLAGHER: Yes, that would be a part
14 of governmental operations.
15 DELEGATE LLOYD TAYLOR: Well, suppose you had
16 an emergency in, say, Cambridge or Baltimore City
17 where you had a riot situation and you had a large number
18 of arrests, and of course the police could not abide by
19 the writ of habeas corpus due to the fact that they have
20 maybe four thousand people arrested, and of course they
21 couldn't take care of their duties and responsibilities in

1 terms of letting people out of jail.

2 This particular incident occurred in Detroit

3 where a number of people were arrested, and they couldn't

4 obtain food or get out of jail.

5 Would this particular section cover a

6 situation like that?

7 DELEGATE GALLAGHER: First of all, let me say

8 that nothing here is intended to inflict or detract from

9 the right of the governor to use the militia under

10 the appropriate circumstances.

11 Secondly, I should say that this constitutional

12 provision requires that the General Assembly take further

13 action and set up specific modes of procedure in the

14 event that such an emergency does take place.

15 In and of itself, Section 319 does nothing

16 other than to allow the General Assembly to pass

17 legislation anticipating a disaster or an emergency.

18 Consequently,the questions which you address to me

19 would seem to be more properly to be considered by the

20 Legislature itself when it acts to implement 3.19.

21 I don't see that this section would give rise to some of

1 the fears which you express.

2 THE CHAIRMAN: Delegate Lloyd Taylor.

3 DELEGATE LLOYD TAYLOR: What I am trying to

4 say is this would seem to conflict with the personal

5 rights proposal on writ of habeas corpus mentioned in the

6 constitution.

7 THE CHAIRMAN: Delegate Gallagher.

8 DELEGATE GALLAGHER: To the extent I can, I

9 say quite definitely and emphatically it is not the

10 intention of the Committee that this be the vehicle for

11 the suspension of any personal rights guaranteed in the

12 constitution.

13 THE CHAIRMAN: Delegate Lloyd Taylor.

14 DELEGATE LLOYD TAYLOR: If the General

15 Assembly can provide for temporary suspension of the

16 continuity of state and local public offices and govern-

17 ment operations, wouldn't this in effect many times work to

18 the suspension of certain personal rights?

19 THE CHAIRMAN: Delegate Gallagher.

20 DELEGATE GALLAGHER: This does not authorize

21 the General Assembly to suspend the operation of govern-

1 mental operations or government offices. This allows them
2 to come in and fill the gap, to keep the offices occupied
3 and keep the government operating.
4 Consequently, it seems to me that this would
5 assist in orderly government rather than detract from it.
6 THE CHAIRMAN: Delegate Lloyd Taylor.
7 DELEGATE LLOYD TAYLOR: This is what I was
8 trying to find out. Thank you.
9 DELEGATE GALLAGHER: This is not an authorization
10 to suspend the writ of habeas corpus.
11 THE CHAIRMAN: Delegate Grant.
12 DELEGATE GRANT: Section 4 of RP-2 provided
13 that no power of suspension of the laws would be allowed,
14 and that section was taken out of the constitution by
15 Amendment No. 4 sponsored by Delegate Scanlan.
16 Do you see any conflict between the fact that
17 the constitution has specifically rejected any suspension
18 of law and this provision which is now being proposed?
19 THE CHAIRMAN: Delegate Gallagher.
20 DELEGATE GALLAGHER: No, I don't, and I say that
21 the Committee took this action without respect to what

1 the Committee of the Whole did on eliminating RP-2,
2 Section 4.
3 THE CHAIRMAN: Delegate Willoner.
4 DELEGATE WILLONER: Mr. Chairman, it was my
5 understanding at the time that this provision, Section 9
6 of RP-1, was discussed, the suspension of the constitution
7 went to the suspension not only of personal rights but it
8 went to the suspension of the constitution as a whole,
9 and I think in discussing this with you I thought we
10 arrived at the conclusion that this was inconsistent
11 with it, but it was an appropriate limitation, or I should
12 say exception to the suspension rule.
13 The colloquy between you and the Chairman
14 of the Committee of the Whole indicated that you feel
15 that the provision of Section 9 only applies to personal
16 rights.
17 THE CHAIRMAN: Delegate Gallagher.
18 DELEGATE GALLAGHER: I was merely saying by
19 way of example that we do not intend that it should apply
20 to the suspension of any of the rights guaranteed under
21 the personal rights section. We try to limit this just to

1 two areas, the filling of offices and the operation of
2 government, continuity in both.
3 THE CHAIRMAN: Delegate Willoner.
4 DELEGATE WILLONER: I understand that, but
5 you understand that this provision and the provisions
6 of this constitution, with the exception of your
7 exception, is to apply to the whole constitution.
8 THE CHAIRMAN: Delegate Gallagher.
9 DELEGATE GALLAGHER: I understand that, yes.
10 THE CHAIRMAN: Delegate Willoner, you and
11 Chairman Gallagher understand, but the Chairman of the
12 Committee of the Whole did not. Would you state that
13 again?
14 DELEGATE WILLONER: That the second phrase of
15 Section 9 of RP-1 and the provisions of this constitution
16 shall not be suspended, applies to the whole constitution
17 with the exception of the provision that is under discussion
18 now.
19 THE CHAIRMAN: I understand, thank you.
20 Are there any further questions? The Chair
21 hears none.

1 Delegate Gallagher, will you proceed to
2 consideration of Section 3.17 (A) (b)?
3 DELEGATE GALLAGHER: I am going to apologize
4 in advance for the technical nature of the discussion
5 of 3.17 (A) (b) on corporate charters.
6 For purposes of identification, I would like
7 to call this the Baltimore and Ohio Railroad section.
8 However, by that I don't mean to say that it applies only
9 to the Baltimore and Ohio Railroad, but then again I can't
10 say that it applies to anybody else as well.
11 This particular section was reluctantly,
12 and I stress the word "reluctantly", included by the
13 Committee on the Legislative Branch because it is by no
14 means beauteous, nor does it possess the virtues of
15 clarity or style, and at this point I must earnestly
16 beg the Committee on Style and Drafting not to change a
17 word because we are keeping it for its historical value,
18 it is true, but also for its legal impact, whatever it
19 may be.
20 Now, we were ill-disposed to including it,
21 but we were persuaded upon further study that we could

1 not take the chance of leaving it out, and if you will permit
2 me the liberty of a slight historical excursion, I would
3 like to tell you something about the Baltimore and Ohio
4 Railroad and like corporations.
5 In 1826, the Maryland General Assembly passed
6 a charter creating the Baltimore and Ohio Railroad. It
7 anticipated in that charter that the State of Maryland
8 and the City of Baltimore would subscribe at least to half
9 of the stock which would be available.
10 As a result of that, Section 18 of the charter
11 conferred what amounted to an exemption from taxation upon
12 the Baltimore and Ohio Railroad.
13 Now, under the decisions of the Supreme Court,
14 a charter passed by a state conferred upon a corporate body
15 is considered to be a contract between the two and is subject
16 to all the protections of a contract, so that consequently
17 once the charter has been conferred by the General Assembly
18 the state could not alter or repeal it, and had to live
19 within the terms of that charter, so that you may say
20 that all the exemptions granted to the B&O Railroad by
21 virtue of Chapter 112 of the Act of 1826 were irremovable.

1 Now, the State of Maryland in 1851, when it wrote
2 the 1851 constitution, realized that it could not continue
3 to give these charters which conferred special status
4 upon corporations, and here I should say that at this
5 time all the corporations of the state were enacted by
6 the charter method through the General Assembly, through
7 acts of the General Assembly, but the state realized
8 it would want to keep a protection to itself so that it
9 could alter or repeal or amend charters, and so in 1851
10 the first two sentences that you see in this section here
11 were added as a part of the 1851 constitution which in
12 effect said that any corporation charter granted by the
13 General Assembly from here on in shall be subject to
14 alteration, modification, and repeal by the General
15 Assembly.
16 Now, nobody knows exactly how many state
17 charters were conferred by the General Assembly prior
18 to 1851, both in colonial and governmental, national
19 governmental times, which contain these exemptions.
20 We are aware of two and possibly three -- the
21 B&O Railroad exemption from taxation, the Green Mountain

1 Cemetery exemption from taxation, but that is now
2 exempt under another section of Article 81 of the Code,
3 and there is possibly a third which we know exists but
4 which a lawyer felt he could not reveal to us because
5 this was a client's confidence that he had.
6 In any event, the State of Maryland began
7 to work on the B&O Railroad to see if it could not
8 chip away at this exemption, and the court of appeals
9 of Maryland held that despite all attempts to the
10 contrary, the charter exemption was irrevocable, and that
11 the B&O was entitled to continue it and did not have
12 to pay taxes upon its real property, upon its gross
13 receipts, in effect it doesn't have to pay sales tax
14 and innumerable other kinds of taxes, and it is probably
15 worth many millions of dollars to the Baltimore and Ohio
16 Railroad.
17 Now, in 1891, the last sentence of what you
18 see before you was added by constitutional amendment,
19 and this was a specific attempt to get at the B&O Rail-
20 road, and nobody else, although in its language certainly
21 it is broad enough to pick up others, and undoubtedly
would.

1 This is a grandfather clause which in effect
2 says that any time anyone who has a state charter seeks
3 to take advantage of the other corporate benefits of the
4 state, alter, repeal or modify their charter, they
5 will conclusively be presumed to have given up any
6 exemption they might enjoy.
7 Now, this 1891 third sentence that I make refer-
8 ence to was passed after the state and the B&O Railroad
9 came to a settlement agreement in 1878, but the settlement
10 agreement again appeared to be unsatisfactory to the
11 State of Maryland, so that what you have through the history
12 of the state is a constant attempt to delimit this
13 exemption, an attempt to make the B&O Railroad uniform with
14 other state-chartered railroads and corporations, and to
15 generally classify it with all other corporations of like
16 character.
17 Now, the B&O Railroad from time to time found
18 it necessary to ask for charter amendments because it had
19 to build other lines, it had to build the metropolitan
20 line in Baltimore, it had to build the Washington line,
21 and it had to build the Philadelphia line. None of these

1 particular grants could be considered to have been
2 conferred by the 1826 original charter which only allowed
3 the B&O to build from Baltimore to some point on the
4 Ohio River.
5 Now, every time the B&O came back to the
6 General Assembly for this additional corporate power,
7 of course the General Assembly did its best to see to it
8 that the exemption which originally applied to the
9 Baltimore to Ohio line did not apply to the others, but
10 there was constant bickering and continued court of
11 appeals cases, continued cases on many levels, continued
12 opinions of the attorney general.
13 The Committee on Legislative Branch realized
14 that it would be possible to take this entire section
15 and to put it in the transitional legislation, but at
16 the same time we realized that there was a risk involved,
17 that in the event the B&O Railroad should challenge this
18 particular mode of operation it might be well that we lost
19 any of the benefits of the third sentence of the section
20 you have before you.
21 The reason that we are impelled to put it in the

1 constitution at this time is this, that the Baltimore
2 and Ohio Railroad has agreed to merge with the Chesapeake
3 and Ohio Railroad. The very act of merger, we believe,
4 will be enough to force the B&O Railroad to relinquish
5 its tax exemption, Despite the fact that the B&O-C&O
6 have agreed to merge, they have not done a thing, and the
7 Maryland Port Authority at the present time has petitioned
8 the Interstate Commerce Commission to force the merger.
9 If that takes place under the language we have
10 before you and which exists presently in Article III,
11 Section 48 of the Constitution, that will amount to taking
12 advantage of one of the corporate prerogatives granted by
13 the State of Maryland and will be conclusively presumed
14 to be a surrender of the B&O exemption.
15 Under all these circumstances, therefore, we
16 believe that we have to continue the language just the way
17 it exists, except we have dropped one reference out to
18 municipal corporations, because we don't feel that we want
19 to take the chance that in monkeying with the language
20 or in failing to put it in the constitution the State of
21 Maryland will jeopardize the opportunity to eliminate the

1 tax exemption which the B&O Railroad has and which we feel
2 it itself must put in jeopardy soon in order to comply
3 with its merger agreement.
4 Consequently, therefore, with that rather
5 involved and convoluted background, which is nothing
6 more than a history of an attempt to regularize the B&O
7 Railroad and to remove the exemption which it has, which
8 no one else has -- and this has, by the way, been reflected
9 in putting only a 20 per cent gross receipts tax upon
10 the B&O as compared to the hundred per cent that others
11 pay -- that is to say a one-half of one per cent as
12 compared to two and a half per cent which other railroads
13 pay -- but this generally has been a history of whittling
14 down on that exemption and trying to do something about it.
15 The State of Maryland regrets that it ever
16 did it, but the B&O Railroad has had the advantage of
17 it to this day, and so we would urge keeping it in order to
18 keep alive the hope in the heart of the State of Maryland
19 that it will kill the B&O exemption and exemptions
20 of like character some day.
21 THE CHAIRMAN: Are there any questions of the

1 Committee Chairman?

2 Delegate Clagett.

3 DELEGATE CLAGETT: Mr. Chairman, in the light

4 of what you have told us up to this point, will you tell

5 us, please, what that first sentence means?

6 DELEGATE GALLAGHER: That first sentence means,

7 when you read it in conjunction with old Article III,

8 Section 33, about no special laws -- which we carried

9 over into another section in LB-2 -- it means that you

10 can't pass special laws creating corporations where general

11 laws already exist for the creation of corporations as,

12 for example, the State Tax Commission was created in 1910

13 to do the chartering instead of the General Assembly

14 itself, so where the General Assembly has set up

15 a mode of incorporating, it must force those who

16 incorporate to follow that particular procedure rather

17 than to go to the General Assembly itself and have the

18 General Assembly pass a charter.

19 THE CHAIRMAN: Delegate Gallagher, notwith-

20 standing your admonition to the Committee on Style, would

21 not the first clause be more readable and make more

1 sense if you made these changes -- if in line 30 you
2 struck the comma and the word "and", and deleted the comma
3 in line 31 and the comma in line 33?
4 DELEGATE GALLAGHER: Mr. Chairman, I do believe
5 that the comma in line 31 ought to come out, because it
6 just doesn't make any sense.
7 THE CHAIRMAN: And in line 33?
8 DELEGATE GALLAGHER: I would think so, but
9 in so doing may I point out that this would be a change
10 from the language as it was passed in 1851.
11 THE CHAIRMAN: Yes, I am just trying for the
12 moment to get the sense of it.
13 Would you agree that for purposes of making
14 sense out of the first clause you would also delete the
15 comma and the word "and" on line 30?
16 DELEGATE GALLAGHER: Corporations may be
17 formed under general laws, but shall not be created by
18 special act and except in cases where no general law
19 exists providing for the creation of corporations --
20 THE CHAIRMAN: Shouldn't you delete the comma and
21 "and" -- "shall not be created by special act except"?

1 DELEGATE GALLAGHER: Corporations may be
2 formed under general laws but shall not be created
3 by special act except in cases where no special law exists
4 providing for -- yes, I think that would more aptly
5 clarify the meaning of that part of the sentence.
6 THE CHAIRMAN: Delegate Clagett, a further
7 question?
8 DELEGATE CLAGETT: No, the chair took my words.
9 THE CHAIRMAN: I am sorry.
10 Delegate Scanlan.
11 DELEGATE SCANLAN: Chairman Gallagher, in your
12 presentation you noted that there was some concern if
13 the matter were left to the transitional legislation.
14 It wasn't clear to me today, nor has it been for
15 the last three weeks, whether this is a concern about the
16 constitutional authority of the General Assembly to
17 continue the restrictions on the exemption in statutes
18 or concern they will yield to the blandishments of the
19 B&O.
20 THE CHAIRMAN: Delegate Gallagher.
21 DELEGATE GALLAGHER: The suggestion has been

1 made that since you can't tell a great deal from reading
2 the language that a General Assembly would not be prompted
3 to keep the language in unless it had the background.
4 I am not suggesting that the B&O Railroad would
5 attempt to lobby the section out. I think more important,
6 since this entire matter has had constitutional dignity,
7 since 1851 as amended in 1891, it would seem a better
8 course of action to keep it in this constitutional sphere
9 for the purpose of dealing with the problem.
10 I don't see that you couldn't accomplish the
11 same thing by transitional legislation. I simply say
12 that there are some elements of risk there which probably
13 would not be present if we used the constitutional route.
14 THE CHAIRMAN: Delegate Scanlan.
15 DELEGATE SCANLAN: Let me ask you a question
16 about another possible route.
17 You noted that this provision concerns primarily,
18 if not exclusively, the B&O. You also observed that
19 hopefully as a result of the merger with the C&O the
20 problem will go away and we will have no need for any
21 provision.

1 Under those circumstances, is there any
2 objection to merely incorporating by reference in this
3 constitution and continuing in effect the provisions
4 of Section 38, Article III of the Constitution of 1867?
5 THE CHAIRMAN: Delegate Gallagher.
6 DELEGATE GALLAGHER: You mean Article 48?
7 DELEGATE SCANLAN: Article 48 -- forgive me.
8 DELEGATE GALLAGHER: I would say there would
9 be this -- if no one examines the acts of the General
10 Assembly from 1851 back, then you don't know what
11 corporations were created which might possibly enjoy
12 some special benefit, be it a tax exemption or something
13 otherwise.
14 In the absence of knowledge in this field, I
15 would not be disposed to suggest removing the catch-all
16 in its entirety, because there may well be other corporations
17 which have been non-operating but whose charters are still
18 alive which could become very valuable under those circum-
19 stances, and I believe, therefore, that I wouldn't be
20 satisfied with having the B&O capitulate, so to speak.
21 I think we ought to keep it alive for whatever other

1 corporation might have these special benefits.

2 THE CHAIRMAN: Delegate Scanlan.

3 DELEGATE SCANLAN: My suggestion was since

4 the problem is a limited one, is there any objection in

5 just incorporating by reference in this constitution the

6 provisions, the long provisions of Article 48, Section 3,

7 rather than going through the ancient ritual, which really

8 doesn't make a great deal of sense, specially if the

9 problem is about to go away.

10 DELEGATE GALLAGHER: Well, I think there is a

11 style objection to it. I think we have agreed that we

12 will not incorporate anything in the constitution by

13 constitutional reference to another constitution.

14 Am I not correct here?

15 THE CHAIRMAN: You are.

16 Delegate Scanlan.

17 DELEGATE SCANLAN: I realize that, but my

18 point was if there wasn't an objection of style, would

19 there be an objection of substance?

20 DELEGATE GALLAGHER: I know of no objection to

21 substance. If this were in Latin, I would see keeping

1 it just the way it is forever.

2 THE CHAIRMAN: The objection is more than

3 one of style. The reason for it is so that one may

4 read the constitution and understand it and not have

5 to resort to another publication to find out what is in it.

6 Delegate Scanlan.

7 DELEGATE SCANLAN: I understand the reason

8 for the rule and I agree with it, but as the Chairman

9 outlined the problem, this is a problem probably unique

10 to the B&O, and may go away anyway, so we don't have the

11 usual concern about people reading the constitution and

12 seeing at a glance what it means.

13 The B&O lawyers will know the background very

14 well.

15 THE CHAIRMAN: Delegate Bothe.

16 DELEGATE BOTHE: Delegate Gallagher, I was

17 wondering why we wouldn't at least cut lines 30 to 36

18 dealing with the grant of legislative corporate charter.

19 Since that is taken care of in LB-2 under 3.17 it doesn't

20 seem to have any application to the problem of the B&O.

21 THE CHAIRMAN: Delegate Gallagher.

1 DELEGATE GALLAGHER: Well, we say that the
2 legislature shall not pass special laws where general laws
3 exist. This section was put in in 1851 as a companion
4 piece to comparable language in the 1851 constitution.
5 I do think that they balance each other and should be read
6 together.
7 If you didn't have the allowance of special
8 laws, I don't think it would be necessary to keep
9 the first two sentences in.
10 THE CHAIRMAN: Delegate Pullen.
11 DELEGATE PULLEN: Mr. Chairman, let's see
12 if we can't spread this around a bit.
13 Section 25, Article 77 of the Code, in
14 respect to the approval of schools, has this statement:
15 "Provided that nothing in this section shall
16 be construed as having application to any school or
17 college that is now operating under a charter granted
18 by the legislature of Maryland".
19 Now, there have been attempts in the past few
20 years to revive charters that were given by the legislature
21 to begin the operation of schools. I wonder if

1 this particular provision would not add an additional group
2 to the problem that you have here.
3 DELEGATE GALLAGHER: I think it could, Delegate
4 Pullen, yes, depending primarily upon what special advantages
5 were conferred by the charters granted by the legislature
6 prior to 1851.
7 THE CHAIRMAN: Delegate Pullen.
8 DELEGATE PULLEN: May I answer that by saying
9 that certain schools may and have not come under the
10 provision of supervision or control under that particular
11 provision.
12 THE CHAIRMAN: Delegate Gallagher.
13 DELEGATE GALLAGHER: Yes.
14 THE CHAIRMAN: Delegate Bennett.
15 DELEGATE BENNETT: Mr. Chairman, I notice
16 that yesterday the stock of the Chesapeake and Ohio
17 Railroad declined three-quarters of a point, and that
18 one of the issues of the Baltimore and Ohio Railroad
19 likewise decreased considerably, and I wonder if the
20 release of this report of yours had any bearing on that,
21 or whether you know of any conflict of interest that might

1 be involved here.

2 DELEGATE GALLAGHER: I don't see a head-on

3 collision in the matter, to be frank about it. I don't

4 think we affect the stock market.

5 THE CHAIRMAN: Delegate Case.

6 DELEGATE CASE: Mr. Chairman, continuing with

7 the point that Delegate Bothe made, to wit, the

8 applicability of Section 3.17 (A) and its presence really

9 making 3.17 (A)(b) unnecessary, is or is it not true that

10 the General Assembly might pass a general law which

11 would state in effect from this point on corporations

12 shall be granted by legislative act?

13 DELEGATE GALLAGHER: It could.

14 DELEGATE CASE: And isn't what you are doing

15 here an attempt to directly meet that and forestall it?

16 DELEGATE GALLAGHER: Yes, I think that is

17 the effect of this language.

18 THE CHAIRMAN: Delegate Case.

19 DELEGATE CASE: Now, with respect to the B&O,

20 has the Supreme Court of the United States held in effect

21 that it is within the sovereign power of the state to

1 grant away in perpetuity a part of its inherent sovereign
2 powers?
3 DELEGATE GALLAGHER: The Supreme Court of the
4 United States has not ruled specifically on this matter,
5 but the Maryland Court of Appeals has specifically so
6 ruled -- it is an inviolable contract.
7 THE CHAIRMAN: Delegate Case.
8 DELEGATE CASE: Has the point ever been made,
9 as far as you know, that no legislative act can bind the
10 state in perpetuity in an area such as this?
11 THE CHAIRMAN: Delegate Gallagher.
12 DELEGATE GALLAGHER: I see Judge Henderson
13 rise, and I should say that Judge Henderson was involved
14 in the court of appeals case to which I made reference
15 and was also a member of the Ross Commission in 1941
16 which studied the B&O special situation. I would yield
17 to Judge Henderson.
18 THE CHAIRMAN: Delegate Henderson.
19 DELEGATE HENDERSON: Very briefly I would just
20 like to answer Delegate Case's question, because I did
21 happen to argue the case in the court of appeals where we

1 very strenuously, at the time I was Assistant Attorney
2 General, made the point that the state could not barter
3 away its sovereign power, and also made the point that this
4 exemption was granted as an inducement to build property
5 which had long since been replaced and had outlived its
6 usefulness by almost a hundred years or more, so that
7 all of those points were made but they were unavailing.
8 The court of appeals, in an opinion by Judge
9 Park, relied heavily upon the Dartmouth College case, of
10 course, in the Supreme Court, and they said that this
11 was an inviolate contract and it existed in perpetuity.
12 Now, the point about this constitutional
13 provision and the reason why I should strongly urge
14 that it be retained in the constitution is that in its
15 present form it was virtually a compromise with the B&O.
16 The B&O did surrender some of its tax exemptions.
17 It does pay a good many taxes. All that is left, really,
18 of its tax exemption -- although that amounts to a good deal
19 of money -- is its about one-fifth rate it pays on its
20 gross receipts and the property exemption on only one
21 of its many lines, so that it has been whittled down to

1 some extent.

2 Nevertheless, I recall in the argument of this

3 case that I urged my colleague, Norwood Orrick, to ask

4 the court of appeals whether we were really dealing with

5 the iron horse or the sacred cow, but being a young man

6 he declined to answer that question.

7 THE CHAIRMAN: Delegate Clagett.

8 DELEGATE CLAGETT: Delegate Gallagher, the

9 prospect of a bonanza in the form of income or receipts

10 is certainly very alluring, but what study did the Committee

11 make of the practicality of retaining this provision

12 as related to the present financial condition of the Balti-

13 more and Ohio Railroad and other railroads throughout the

14 country?

15 THE CHAIRMAN: Delegate Gallagher.

16 DELEGATE GALLAGHER: Well, the Baltimore and

17 Ohio Railroad is the only railroad in the state of Mary-

18 land which enjoys this unique exemption. It has been

19 very careful to preserve it, because it has never altered

20 its original charter of 1826. It is quite aware of the

21 monetary value it enjoys and it is equally aware of the

1 impact of this constitutional provision operating upon any
2 charter modification. It has also refrained thus far from
3 carrying out a contract obligation -- that is to say,
4 merger with the C&O Railroad -- which would undoubtedly
5 bring it within the four corners of this constitutional
6 section.
7 THE CHAIRMAN: Delegate Clagett.
8 DELEGATE CLAGETT: I don't believe you under-
9 stood my question. My question really is what study
10 was made by the Committee to determine the ability of
11 the Baltimore and Ohio Railroad to pay any such taxes if
12 and when this protection went out of the constitution
13 and they were required to pay it?
14 THE CHAIRMAN: Delegate Gallagher.
15 DELEGATE GALLAGHER: We did not inquire into
16 that. In addition to Judge Henderson, however, there
17 was another member of the Ross Commission, Mr. Walter
18 Lewis, who is quite familiar with this section, and it was
19 his estimate that the impact of the exemption was worth
20 several million dollars. We did not feel it was
21 incumbent upon us to look into the ability of the railroad

1 to pay.

2 As a former people's counsel, I do recognize

3 the ability of public utilities to increase their rates

4 to take care of increased expenditures, and I would believe

5 the B&O would not be averse to taking this road to economic

6 security.

7 THE CHAIRMAN: Delegate Clagett.

8 DELEGATE CLAGETT: By way of caption on what

9 we have said, I gather the Committee then made no background

10 study to determine whether if this exemption was lost

11 by the B&O it would be or would not be able to meet the

12 obligation to tax?

13 DELEGATE GALLAGHER: No, sir, we did not feel that

14 was a proper matter of inquiry.

15 THE CHAIRMAN: Delegate Case.

16 DELEGATE CASE: Maybe we can get at it this

17 way, Mr. Chairman.

18 Succinctly, would the B&O Railroad like to see

19 this provision in the constitution or out of the constitution?

20 DELEGATE GALLAGHER: Mr. Case, I am not

21 provided with a crystal ball, but if I were I would suspect

1 that any corporation which enjoys this exemption would not
2 like to see the barriers raised to losing the exemption,
3 so I would think the B&O would not look kindly upon your
4 keeping this, but I don't think that has a great deal
5 to do with it.
6 THE CHAIRMAN: Delegate Lloyd Taylor.
7 DELEGATE LLOYD TAYLOR: Delegate Gallagher,
8 I have about two questions. I am not trying to ask the
9 question to embarrass you, but I am trying to point out a
10 few facts.
11 Number one, I have been a passenger of the B&O
12 Railroad for the past several years when I take a trip home
13 to Ohio. I realize that the B&O has cut its passenger
14 fares from a high rate to a more economical rate, but do
15 you know the exact amount of money that the State of
16 Maryland loses from the fact that it has given this
17 exemption to the B&O Railroad?
18 THE CHAIRMAN: Delegate Gallagher.
19 DELEGATE GALLAGHER: No, Delegate Taylor,
20 I do not. It has been estimated that it is millions of
21 dollars.

1 THE CHAIRMAN: Delegate Taylor.

2 DELEGATE LLOYD TAYLOR: Well, do you know

3 anything about the merger of the B&O with the Chesapeake

4 and Ohio? Do you feel that it will merge in the near

5 future?

6 DELEGATE GALLAGHER: It is obligated to merge.

7 THE CHAIRMAN: Delegate Taylor.

8 DELEGATE LLOYD TAYLOR: One last question.

9 Are you aware of the fact that I appeared

10 before your Committee on a proposal concerning the minimum

11 income to individuals in the State of Maryland?

12 THE CHAIRMAN: Delegate Gallagher.

13 DELEGATE GALLAGHER: Yes.

14 DELEGATE LLOYD TAYLOR: And, of course, this

15 subsidy that is given to the B&O Railroad subsidizes

16 a corporation, and of course this is what you call a

17 distinction from the welfare state.

18 In my experience as a social worker, I have had--

19 THE CHAIRMAN: Delegate Taylor, is this a

20 question?

21 DELEGATE LLOYD TAYLOR: Yes, it is a question.

1 In my experience as a social worker, I have
2 had dealings with all types of people. I have called the
3 B&O office to verify railroad compensation, to verify
4 when certain employees of the B&O were furloughed and the
5 fact they were receiving so much unemployment compensation,
6 and of course I find that we have a problem here.
7 The problem is that you are subsidizing a
8 million dollar corporation, and of course employees of
9 the B&O may suffer.
10 I am wondering whether it would be better or
11 more wise or more justifiab le to really subsidize the
12 people who are in need -- for instance, some of the B&O
13 employees who may be furloughed because of lack of work,
14 or may have reached retirement age, and many times when
15 they do reach retirement age they have to resort to
16 welfare assistance in terms of paying hospital bills.
17 DELEGATE GALLAGHER: Mr. Taylor, the State
18 of Maryland regrets that they granted this exemption,
19 and certainly there is no indication that the proceeds
20 which would otherwise be paid into taxes have been
21 specifically put into areas of social concern, and no

1 indication to the contrary, either.

2 I think it is important to remember that this was
3 a virtual joint venture between government and private
4 enterprise in the beginning when railroads were new,
5 and no one could tell whether or not the corporation
6 would end up as a money-making corporation or successful
7 enterprise. It did. However, the State of Maryland
8 got burned along the way, and the State of Maryland,
9 for all intents and purposes, is out of the stock owning
10 of the B&O Railroad, and an exemption which was originally
11 granted to spur initiative, and partly recognizing the
12 fact that government was going to be a 50 per cent stock-
13 holder, the facts justifying those exemptions have dis-
14 appeared.

15 I don't think that this was early welfare
16 state by any means. I think this was an attempt to
17 initiate and spur along a new undertaking.

18 THE CHAIRMAN: Delegate Taylor.

19 DELEGATE LLOYD TAYLOR: The welfare budget
20 in the State of Maryland is over $30 million, or more,
21 and of course I saw in the paper just yesterday that they

1 plan to cut the welfare budget.

2 Wouldn't it be better to deny the B&O in this

3 constitution this right of subsidy, or tax break, and

4 increase the welfare budget?

5 DELEGATE GALLAGHER: That may well be. The

6 point is here we can't take the exemption away from the

7 B&O in the absence of its doing something which by law

8 removes the exemption.

9 THE CHAIRMAN: Delegate Mentzer.

10 DELEGATE MENTZER: Delegate Gallagher, did

11 your Committee consider whether this provision could

12 have been in the constitution in the schedule, and although

13 the schedule is primarily for the temporary items of

14 transition it can also be used as an appendix to carry

15 over those things which do not belong or seem incongruent

16 with the main body of the constitution?

17 DELEGATE GALLAGHER: We felt again that

18 because of the importance of the subject matter and the

19 fact that it had been handled on a constitutional basis

20 in the past that we ought not to jeopardize our ability to

21 remove this exemption by putting it in any secondary status,

1 and consequently we determined to use the constitutional
2 route despite the language and the length.
3 THE CHAIRMAN: Delegate Mentzer.
4 DELEGATE MENTZER: But the things in the
5 schedule have the full force of the constitution, do they
6 not?
7 DELEGATE GALLAGHER: Yes, they do, but again
8 we are not certain, as I have said before, that the B&O
9 is the only corporation involved. This is really a
10 matter of principle, although it appears to apply to
11 an individual case, and we simply felt that we didn't want
12 to confer some less than constitutional status, and we
13 considered putting it in the transitional legislation and
14 decided we ought not to.
15 THE CHAIRMAN: Delegate Willis, do you have
16 a question?
17 DELEGATE WILLIS: A point of personal privilege,
18 Mr. Chairman.
19 THE CHAIRMAN: State the privilege.
20 DELEGATE WILLIS: I would like to announce to
21 the group that in the balcony in the rear are 119 students

1 from Harford County, 79 students from the Edgewood Junior
2 High School, with their teachers, Miss Lois Merckle and
3 Mr. Garlands Fuller, and 30 eighth grade students from
4 our North Harford High School with their teacher, Mr.
5 Stephen C. Williams.
6 I would appreciate your all joining me in giving
7 them a welcome. (Applause.)
8 THE CHAIRMAN: Delegate Ritter.
9 DELEGATE RITTER: Has your Committee gone into the
10 far-reaching effect that if this exemption was taken out
11 of the constitution what effect it might have on railroad
12 employment on the B&O in the State of Maryland as well as
13 effect to the Port of Baltimore by them having their
14 tentacles into the coal fields of West Virginia whence
15 most all our coal is shipped abroad from Curtis Bay?
16 DELEGATE GALLAGHER: No, we have not. I should
17 say it is not punitive or penal legislation. This is
18 merely an attempt to regularize and to make uniform
19 corporation statutes and the handling of corporations
20 chartered by the State of Maryland. We did not seek
21 to weigh the economic impact of the loss of the exemption.

1 THE CHAIRMAN: Delegate Ritter, do you have
2 a further question?
3 DELEGATE RITTER: You will admit that there
4 would be quite an economic impact, though, if the merger
5 of the B&O-C&O would take place or would not take place
6 if they would decide to do away with this exemption that
7 they would probably ship a lot of the commodities to ports
8 south of here, which is Newport News and Norfolk, Virginia,
9 rather than through the Port of Baltimore?
10 DELEGATE GALLAGHER: The question of the
11 desirability of the merger between the B&O and C&O has
12 already been decided. Now they are merely in the
13 implementation stage, and I don't feel that the question
14 of the loss of the exemption should be considered in any
15 other aspect than the state viewing corporate entities which
16 it has created, and that is the area in which we restricted
17 ourselves.
18 THE CHAIRMAN: Delegate Kathleen Robie, did
19 you have a question?
20 DELEGATE KATHLEEN ROBIE: Mr. Chairman, I
21 would like for the convention to join with me in

1 welcoming a group of elementary students with the Oxon
2 Hill Elementary School. (Applause.)
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1 THE CHAIRMAN: Any other questions of the
2 committee chairman?
3 Delegate Grumbacher.
4 DELEGATE GRUMBACHER: Are there any other states
5 which have this type problem with corporations, or have they
6 disappeared by this point in time?
7 THE CHAIRMAN: Mr. Gallagher.
8 DELEGATE GALLAGHER: We haven't researched that
9 point, Delegate Grumbacher.
10 THE CHAIRMAN: Any other questions?
11 Delegate Gallagher, the Chair has one or two
12 questions. It directs your attention to the sentence
13 beginning in line 35, and extending down to 41, and I will
14 ask you if that does not have a much broader import than the
15
16 B&O railroad or the other corporations you mentioned with
17 respect to tax exemptions?
18 DELEGATE GALLAGHER: Yes, sir, it does. In
19 actuality, the first two sentences were in the 1851
20 Constitution, and the sentence beginning "The General
21 Assembly shall not alter --" on line 41 came in with

1 the 1851 Constitutional amendment, and it was passed as
2 a general corporate desire rather than specifically with
3 the B &O Railroad in mind.
4 THE CHAIRMAN: And is not merely a transitional
5 provision?
6 DELEGATE GALLAGHER: No, sir; that is not
7 transitional.
8 THE CHAIRMAN: Any other questions?
9 Delegate Scanlan.
10 DELEGATE SCANLAN: My question is prompted by
11 the question that the Chairman put to you. He called
12 attention to line 35, and the sentence that follows down
13 to line 41.
14 Is this statement of legislative authority over
15 the chartering of corporations necessary in this day and
16 age, or is it not now well established that, even absent
17 a sentence of that sort, the State of Maryland would have
18 plenary power inamending corporate charters?
19 DELEGATE GALLAGHER: I don't think that is
20 certain. As long as we have Court of Appeals decisions
21 which say that a charter confers a right which can't be

1 removed or tampered with after the conferral; that you have
2 to have a kind of existing blanket sentence such as this
3 so that any charter created takes any -- any corporation
4 created takes its charter subject to this overall caveat.
5 DELEGATE SCANLAN: If we started with a blank slate
6 couldn't the legislature pass an overall incorporation
7 statute after which, of course, the chartering and amending
8 of corporate charters would take place?
9 I am not suggesting that the legislature wouldn't
10 act under a master set of laws.
11 Doesn't the General Assembly of Maryland have
12 plenary power except where the limitations of contract might
13 intervene?
14 DELEGATE GALLAGHER: Yes, you are correct. I
15 think the question is a policy one. If the legislature
16 had that power, it would also have the power to make
17 exceptions. In the Constitution it could not make
18 exceptions.
19 THE CHAIRMAN: Delegate Henderson.
20 DELEGATE HENDERSON: Isn't it true that for the
21 first time in the history of the State we have adopted
in the Constitution a contract clause which heretofore has

1 been present only in the Federal Constitution?

2 DELEGATE GALLAGHER. I believe that is correct,

3 Judge.

4 DELEGATE HENDERSON: Is that not an additional

5 reason for incorporating this provision, to make sure that

6 charters are not irrepealable contracts?

7 DELEGATE GALLAGHER: Yes, sir, that would be

8 an additional reason.

9 THE CHAIRMAN: Any other questions of the

10 committee chairman?

11 If not, if you will return to your seat, we

12 will take up the section-by-section consideration of the

13 committee recommendation.

14 Are there any amendments to section 3.03b?

15 Delegate Gilchrist.

16 DELEGATE GILCHRIST: Mr. Chairman, we have an

17 amendment to strike 3.03b in its entirety, which was

18 requested about an hour ago.

19 THE CHAIRMAN: Just a second. Is the Chief

20 Page here?

21 Is your amendment to delete the entire section

1 3.03b?

2 DELEGATE GILCHRIST: Yes, Mr. Chairman .

3 THE CHAIRMAN: Are there any other amendments

4 in preparation which wo-ld affect or amend section 3.03b?

5 Delegate Weidemeyer.

6 DELEGATE WEIDEMEYER: Mr. Chairman, I have an

7 amendment in the process of preparation which would strike

8 everything after the first sentence, ending with the word

9 "Representatives" in line 13. Strike everything after

10 the word "Representatives" in line 13.

11 THE CHAIRMAN: Any other amendments to the

12 section 3.03b in the course of preparation?

13 D elegate Gilchrist.

14 DELEGATE GILCHRIST: Mr. Chairman, I believe

15 Delegate Fox was preparing an amendment, even though he

16 is not here at the moment.

17 THE CHAIRMAN: D elegate Gallagher.

18 DELEGATE GALLAGHER: Mr. Chairman , I would have

19 no objection to doing this orally, because as I understand

20 it =-

21 THE CHAIRMAN: I just want to find out what

1 amendments are to be offered so that we would know the
2 order in which to offer them.
3 Delegate Weidemeyer, if the proposed amendment
4 to be offered by Delegate Gilchrist were adopted to delete
5 the entire section 3.03b, would you still want to have
6 an amendment to put back in the first sentence of 3.03b,
7 or would you stand on the deletion of the entire section?
8 DELEGATE WEIDEMEYER: If the Gilchrist amendment
9 prevailed, I would withdraw mine.
10 THE CHAIRMAN: Delegate Fox, do you have an
11 amendment?
12 DELEGATE FOX: I asked one to be prepared about a
13 half an hour ago.
14 THE CHAIRMAN: Can you indicate the nature of it?
15 DELEGATE FOX: It would only be offered if the
16 amendment to strike 3.03b passed. If that passed, and
17 3.03b were struck, then I was going to put a date in 3.03c.
18 THE CHAIRMAN: No amendment to 3.03b, then?
19 DELEGATE FOX: No, sir.
20 THE CHAIRMAN: Any objection to delete all of
21 3.03b, notwithstanding that it is not printed, if it is

1 printed and on your desk during the course of the next
2 half hour?
3 The Chair hears none. This will be amendment
4 1 by Delegate Gilchrist, to delete all of the section 3.03b
5 comprising lines 8 to 25 on page 1.
6 Is that your amendment, Delegate Gilchrist?
7 DELEGATE GILCHRIST: Yes, Mr. Chairman, I should
8 add that this is joined in by D elegates Freedlander, Fox,
9 Adkins, Carson, and others.
10 THE CHAIRMAN: Very well, the amendment having
11 been submitted by Delegate Gilchrsit and seconded by
12 the other sponsors, the Chair recognizes Delegate Gilchrist.
13 DELEGATE GILCHRIST: Mr. Chairman and ladies
14 and gentlemen of the Convention: It seems to us that the
15 inclusion of such a provision as is proposed by section
16 3.17b is something which is entirely unnecessary, clutters
17 up the proposed Constitution with language which is
18 unneeded and undesirable.
19 Section 4 of Article 1 of the Federal
20 Constitution prescribes that the times, places and manner
21 of holding elections for Senators and Representatives shall

1 be prescribed in each State by the legislature thereof, but
2 the Congress may at any time b y law make or alter such
3 regulations except as to the places of choosing Senators.
4 By that section, the Federal Government has
5 preempted the field of Congressional elections.
6 By the section which is proposed to be included
7 in the Constitution, the convention is being asked to
8 invade a field that has already been preempted. We believe
9 that this section is not necessary, the fact that it is
10 unnecessary is d emonstrated by the omission of such a
11 provision from the model State Constitution.
12 If we adopt the section, we may very well find
13 ourselves in a position where the standards and procedures
14 which are prescribed in this proposed section will freeze
15 into our Constitution standards and procedures which are
16 inconsistent with the Federal Constitution, or with law
17 which might be adopted pursuant to the Federal Constitution.
18 If we adopt such a thing as the fixed percentage
19 of a ten percent variance permitted under the proposed
20 sections, we may well find ourselves freezing into our
21 Constitution a percentage which is inconsistent with that

1 which is to be adopted by the Federal Constitution, or the
2 laws pursuant to it.
3 We already have found that a fixed percentage is at
4 variance with the holdings of the Supreme Court of the United
5 States which has determined simply that Congressional
6 districts need to be substantially equal in population.
7 Substan tially equal is a far more flexible term than a
8 fixed ten percent, because if und er the proposed section
9 we varied as much as a fraction of one percent over, our
10 districting would be out, and in these days of mobility of
11 population, rapidly growing areas in some sections, static
12 ones in others, I find it very difficult to believe that it
13 is desirable to freeze a fixed percentage.
14 I see no reason why the standards of the Supreme
15 Court of the United States in a field which has been
16 preempted by the Federal Government should not be entirely
17 acceptable to the people of Maryland.
18 There is neither a need for nor a desirability
19 for the inclusion of this in the Constitution of Maryland,
20 and I strongly recommend that you adopt the amendment, strike
21 the provision.

1 THE CHAIRMAN: Delegate Gallagher.

2 DELEGATE GALLAGHER: Mr. Chairman and ladies
3 and gentlemen: I oppose the amendment. I think it is
4 idle to believe that the Congress of the United States is
5 going to provide sufficient guidelines for proper redistrict-
6 ing. It has now been 36 years since we had a Congressional
7 act which would provide for compactness and for adjoining
8 territory, the "substantially equal" came into mode after
9 the Supreme Court held in the Georgia case that they had to
10 be substantially equal.

11 It is quite true after the Congress acts in the
12 area that it will have preempted the field, and any
13 Constitutional provision will fall.

14 On the basis of history and on the basis of
15 honest estimates made by those who are close to Congress,
16 it is only fair to say that there is not going to be the
17 kind of redistricting legislation out of Congress which
18 is going to guarantee the kind of representation that we
19 want.

20 Therefore I would say when we have an opportunity
21 to provide fair representation in the seats of Congress

1 we ought to take advantage of it, and the gossamer fear of
2 the day when Congress will allow these provisions to fall,
3 we ought not to worry about.
4 For whatever time we will have Congressional
5 redistricting, we should seize on it. If it is only 10,
6 20 or 30 years, it will be two or three decades of much
7 more satisfactory government.
8 Certainly the legislature of the State of Maryland
9 has demonstrated that it has been incapable of coming
10 up with a federal Constitution plan on a one-man, one-vote
11 basis, and I think that we owe it to the legislators who
12 are going to grapple with this problem again to give them
13 the outline of what the people of Maryland expect of
14 them, not only on the basis of what the Supreme Court
15 might require, but what we are entitled to require over
16 and above the bare minimum.
17 I urge you to defeat this amendment.
18 THE CHAIRMAN: Any further discussion?
19 Are you ready for the question? The Clerk
20 will ring the quorum bell.
21 The question is on the adoption of amendment

1 No. 1 to delete section 3.03b comprising all of lines 8
2 to 25, inclusive, on page 1 of committee recommendation
3 LB-3. A vote Aye is a vote in favor of the amendment, and
4 will delete the section. A vote No is a vote against the
5 amendment.
6 Cast your votes.
7 Has every delegate voted? Does any d elegate
8 desire to change his vote?
9 The Clerk will record the vote.
10 There being 37 votes in the affirmative and
11 82 in the negative, the motion is lost, and the amendment
12 is rejected.
13 Delegate Weidemeyer, do you desire to offer
14 your amendment now?
15 DELEGATE WEIDEMEYER: I do, Mr. Chairman.
16 THE CHAIRMAN: Is there any objection to
17 considering an amendment to delete all except the first
18 sentence of section 3.03b, notwithstanding the fact that
19 it is not printed with the understanding that the printed
20 amendment will be on your desk shortly?
21 The Chair hears none. Amendment No. 2 will be

1 to delete all except the first sentence of section 3.03b
2 which will be to delete line 13 after the portion of the
3 word "-sentatives", and "The difference between the populations
4 of the largest and smallest congressional districts in
5 the State shall not exceed ten per cent of the mean population
6 of all congressional districts. Each congressional district
7 shall consist of adjoining territory and be compact in form.
8 Due regard shall be given to natural boundaries and the
9 boundaries of political subdivisions. The boundaries of
10 Congressional districts shall be established according to
11 these standards immediately prior to the statewide
12 congressional general election in 1972 and every tenth year
13 thereafter."
14 Is there a second ?
15 (The motion was duly seconded)
16 THE CHAIRMAN: The Chair will not recognize
17 you now, Delegate Weidemeyer. The hour for the special
18 order of the day is approaching.
19 The Chair recognizes Delegate Powers so that
20 the committee might rise.
21 DELEGATE POWERS: I move that the Committee of

1 the Whole rise so we may consider the matter that was set
2 for special order at 12 noon today.
3 THE CHAIRMAN: Is there a second?
4 (The motion was duly seconded)
5 THE CHAIRMAN: All in favor signify by saying
6 Aye. Contrary No. The Ayes have it, and it is so ordered.
7 (Whereupon, at 12 o'clock noon, the Committee
8 of the Whole rose, and the Convention reconvened.)
9 (The mace was replaced by the Sergeant-at-Arms.)
10 THE PRESIDENT: The Convention will please come
11 to order.
12 On behalf of the Committee, the Chair reports
13 the Committee has under consideration LB-3, that it still
14 has it under consideration, and desires leave to sit again.
15 The matter for special order is the consideration
16 of the motion to reconsider the vote by which committee
17 recommendation GP-4, dealing with consumer protection,
18 was adopted on special reading.
19 Under the motion adopted yesterday, debate is
20 limited to a total of 20 minutes, ten minutes on each
21 side. Each speech is limited to 2 minutes.

1 The Chair proposes to recognize first Delegate
2 Johnson, and then to recognize Delegate Boyer, Chairman
3 of the committee, and within the time allowable to
4 recognize speakers on either side of the question.
5 Note that under motion 7 the vote on the committee
6 recommendation in the event the motion to reconsider is
7 carried, will be taken without further debate immediately
8 following the vote on reconsideration. Therefore, on the
9 motion to reconsider, the full question is open. You may
10 discuss the motion to reconsider and also the primary
11 recommendation.
12 Will the Clerk please ring the quorum bell?
13 The Chair recognizes Delegate Johnson for 2
14 minutes.
15 DELEGATE JOHNSON: Mr. President and fellow
16 delegates. Just very briefly, initially, why reconsider?
17 May I point out to you that under the second
18 reading the debate on this matter was inadvertently cut off
19 after only two speakers. The attendance was low, 24
20 delegates were either absent or not voting, and, thirdly,
21 on third reading we may or may not have this item before

1 us individually.

2 I hope that you have CP-4 before you, and will

3 take a look at it.

4 This provision is either an enforceable mandate

5 or a horatory statement which cannot compare to the equal

6 opportunity item which was deleted from the education section

7 of general provisions.

8 I fear, however, that this is in fact a mandate

9 and a constitutional guarantee while defying logical inter-

10 pretation apparently seeks to insure a money-back guarantee

11 to everyone upon a suggestion of an impropriety. However

12 unfounded this sugestion may be, I ask you to consider

13 how the legislature can pass a law that will protect and

14 educate all of the citizens against alleged harmful and

15 unfair business practices.

16 I ask you to consider how the word "protection"

17 is going to be defined in the content of this section, and

18 how far the word "education" purports to be extended.

19 No one can argue that this is not legislation.

20 I realize that it is extremely tempting to include this and

21 other matters in the Constitution, but doesn't our duty to

1 our citizens override this and other similar considerations?

2 Now, aside from the question of what does all

3 this mean, consider the additional bureaucratic agency that

4 will not only be created, but be perpetuated under this

5 particular section, regardless of its size and scope, it

6 will never protect people from themselves, but it will turn

7 an agency of our government into a complaint d epartment

8 that may be forced to advertise "your money cheerfully

9 refunded."

10 I urge you to vote for the reconsideration, and

11 then delete this section.

12 THE PRESIDENT: Delegate Boyer.

13 DELEGATE BOYER: Mr. Chairman, I would like to

14 yield to Delegate Bard.

15 THE PRESIDENT. I will recognize D elegate Bard

16 afterward. You do not desire to speak?

17 DELEGATE BOYER: No, sir. We had this worked

18 out.

19 THE PRESIDENT: Very well. Delegate Bard .

20 DELEGATE BARD: Mr. President, speakers are

21 arranged in terms of speaking time. I have talked with

1 Mr. Boyer abut this, and Delegate Sickles is to speak for
2 2 minutes.
3 THE PRESIDENT. This is not a control period
4 of time. There is no controlled debate.
5 Do you desire to speak? If so, I suggest you
6 do so now.
7 DELEGATE BARD: Yes, I do. I do.
8 THE PRESIDENT: I say this because it is possible
9 for only five speakers, and if somebody gets ahead of you --
10 DELEGATE BARD: All right.
11 Mr. President, we have had four hours of debate
12 previous to Thanksgiving, and after Thanksgiving, on this
13 consideration, and three votes. The proponents in this
14 regard have mad e it clear that this is of constitutional
15 status, and the reason why it is of constitutional status is
16 because it is true that Maryland has operated in this area,
17 but in this whole general area there are about six categories,
18 those who are authorities tell us that we would be able to
19 operate with great force if the Constitution stated something
20 in regard to areas such as drug abuse, truth in lending, and
21 stronger acts in regard to safety and honesty in packaging.

1 Voluntary actions do not work. The concept
2 of caveat emptor is dead. The chemical and technical
3 nature of the world makes it impossible for him to
4 understand his purchases. The greatest number of purchasers
5 say we cannot compete with the few people who are not
6 honest. Those of us who are honest can compete more firmly
7 if there is force behind what we are doing.
8 THE PRESIDENT: Thank you.
9 Any other delegate desire to speak in favor
10 of the motion to reconsider?
11 D elegate Henderson.
12 DELEGATE HENDERSON: I would urge this committee
13 to reconsider, and delete this proposal from the
14 Constitution. I am disturbed at the breadth of the
15 proposition, protection and education, which are the broadest
16 words that I can imagine.
17 I think it will lead to endless litigation
18 before its exact scope is determined by the courts, and
19 if it has any legislative effect, if it is not purely
20 oratory and not self-executing, I assume that it is not, I
21 assume that it would require legislation to implement it,

1 then it furnishes really no guide. All that it says in
2 effect is that we should protect the people against fraud.
3 That is what it amounts to, and fraud has infinite variety
4 and it denies what is really the basic principle of
5 law and order, that is self-help, so for all of those
6 reasons I think it would be a mistake to enshrine this
7 kind of a general proposition in the Constitution.
8 THE PRESIDENT: Delegate Koger.
9 DELEGATE KOGER: Mr. Chairman and ladies and
10 gentlemen: No provision at this convention has received
11 greater praise in the local and national newspapers, and
12 radio and television, than consumer protection. It was
13 the very first thing we did that directly benefited the
14 people.
15 Everybody is a consumer, and a measure of this
16 kind will interest the people. The main question we will
17 be asked is: What did you do for me? You will be saying
18 something, and it will appeal to everyone, your neighbor
19 and secretary, and certainly your wife, when you can say
20 "You know, we added something to the Bill of Rights, a right
21 in the marketplace, consumer protection."

1 I certainly hope you will stand your ground and
2 support this measure.
3 THE PRESIDENT: D elegate Jett.
4 DELEGATE JETT: Mr. President, and fellow
5 delegates: I wish to speak in favor of reconsideration,
6 because this item is an item that is too important to
7 vote on lightly.
8 Regardless of all of our feelings as to the
9 consumer -- and we are all consumers -- this is something
10 to affect every man, woman and child in this State, and
11 in every walk of life.
12 I further want you to reflect on the fact that
13 I think this is an unwarranted reflection on the thousands
14 of honest merchants in this State, and the millions of
15 intelligent consumers in this State. We are not infested
16 with a bunch of crooked merchants, and we are not a state
17 inhabitated by subversives.
18 This provision makes you stop and ask "What is
19 unfair" What is harmful? Are we attacking the profit
20 motive? Is the amount of profit unfair?"
21 In trying to ask the public want have we done for

1 you, I say to you very sincerely if we put this type of
2 thing into the Constitution we will have done nothing for
3 the public but have given them a terrific headache as to
4 what on earth this could possibly mean in terms of any
5 kind of protection that the legislature or anyone else could
6 provide for.
7 I ask you very sincerely to vote for
8 reconsideration.
9 THE PRESIDENT: D elegate Sickles.
10 DELEGATE SICKLES: Mr. President and fellow
11 delegates: I strongly urge that you vote against reconsidering
12 this matter that we have twice passedin this Convention.
13 I think that there is no question but that there is no
14 mischief that results from this particular provision.
15 There is no question but that it does not have any
16 impact or effect until the legislature does pass appropriate
17 legislation, but I think we ought to understand that
18 this has been one area where there has been much discussion
19 but not much action on the national or in many of the state
20 levels, and there is a reason for it: because there is a
21 basic thrust that we are concerned with.

1 I think most of us lawyers know and others too,
2 the adage: Let the buyer beware." What has happened in our
3 society as it has become more complex is that this is an
4 adage that we cannot live with exclusively so that by
5 breathing life into our Constitution by including this
6 provision it seems to me we are recognizing really the
7 advent of a new principle, a principle which should be
8 recognized in this Constitution, and should be passed on to
9 our legislators.
10 THE PRESIDENT: Delegate Harry Taylor.
11 DELEGATE HARRY TAYLOR: Mr. President and ladies
12 and gentlemen of the Convention:
13 As a result of the vote the last time I got up
14 to talk, the people who were opposed to this motion for
15 reconsid eration have invited me to speak in favor of it.
16 (Laughter).
17 We heard a lot about Pandora's box here in the
18 convention, and I submit that the lid has been flipped up and
19 down so often that the hinges are now loose, and ready to
20 fall off, but I don't think we have ever given it as big
21 a flip as we will if we pass this provision allegedly to

1 help the consumer.

2 The riots and the protests that we have today I

3 think are more from political promises that are incapable

4 of enforcement than anything else.

5 This particular provision does absolutely

6 nothing. It holds out hope, but still it may well do

7 great harm to those people who we seek to help.

8 I say that for this reason: The General Assembly

9 of Maryland has acted in this field, the Attorney General has

10 set up a consumer's protection section within its office.

11 These people are running hard to help the consumer, and

12 sometimes when someone is running hard, you give them a little

13 push and you make them fall. And this push, if the

14 General Assembly and all of those who are working so

15 hard to help the consumer, may just be the thing that says,

16 well, we can't satisfy everybody, so let us get out of this

17 and not beat our brains out, and I ask you to vote to

18 reconsider this, and let us strike this thing out of

19 our Constitution.

20 We talk about freezing in the Constitution things

21 that aren't necessary there, and if we freeze in enough

1 of them we are going to create an iceberg that is going
2 to sink on May 14th.
3 THE PRESIDENT: Delegate Key.
4 DELEGATE KEY: Mr. President, and ladies and
5 gentlemen:
6 I suppose in everything there must be a favorite
7 play toy, and I believe consumer protection has become
8 the play toy of the convention.
9 Listen to this. Now, we have already in our
10 constitution recognized that our society has changed from
11 an agrarian age to an industrial age to the present
12 technological age, because we have recognized that these
13 forces in society have caused havoc in many areas.
14 We have recognized it first by constitionally
15 giving relief to the farmer, because of his economic dis-
16 advantage. Secondly, we have constitutionally recognized it
17 with a vote of 127 in favor and 21 against, that our changing
18 society will continue to have harmful effects on national
19 resources, trees, rocks,rivers and streams. We have also
20 recognized that the same society is causing a disadvantage
21 to the working man. We have constitutionally recognized

1 that he needs something.

2 Now, all I am urging is consistency. Now, if

3 we are going the way of Delegate Scanlan, let us go that

4 way. If we are going to recognize economic advantage in

5 some, let us recognize it in all.

6 I urge you to be consistent, and recognize the

7 needs of the last group of people -- the consumer.

8 THE PRESIDENT: Delegate Marvin Smith.

9 DELEGATE MARVIN SMITH: Mr. President, this

10 grants no power that the General Assembly would not

11 otherwise have. Now, I have before me the definition of

12 police power from Black's approved law dictionary. Police

13 power is d efined as an authority conferred by the American

14 Constitutional system upon the individ ual States through

15 which they are enabled to adopt such regulations as tend

16 to prevent the commission of fraud, violence or other

17 offences against the State, and in the arrest of criminals

18 and secure generally the comfort, health and prosperity

19 of the State by preserving the public order, preventing

20 a conflict of rights in the common intercourse of the

21 citizens and insuring to each an uninterrupted enjoyment

1 of all the privileges conferred upon him by the laws of
2 his country.
3 This provision is going to be, as Delegate
4 Adkins said here on something else the other day, the
5 holding out to the people of the promise of giant quart size
6 that the General Assembly cannot put into effect, really.
7 The General Assembly can do everything that it needs to do
8 without this provision.
9 Delegate Freedlander, in her memorandum has
10 well pointed out the factthat the General Assembly has
11 already actedin this field, really it accomplishes nothing
12 other than to hold out hope that cannot be fully fulfilled.
13 THE PRESIDENT: Delegate Bennett.
14 DELEGATE BENNETT: Mr.President, Vice President
15 Nixon, a gentleman whom I don't often quote, has said that
16 there are two wars that the American people face, one in
17 Vietnam, and one here.
18 Every survey that has been made shows the
19 validity of this statement. Opinion Research Corporation,
20 may I say Delegate Taylor, has recently studied this
21 matter,and they have shown that the riots were generated
less by denial of political rights than it was motivated

1 by animosity toward the way the Negroes are exploited by
2 merchants, by credit agencies, by stores that raised
3 prices at times when welfare checks come about. Those
4 are facts, and an expression, it seems to me, of a
5 disapproval of this sort of practice would be and a demand
6 that the General Assembly take some action, would be as
7 much as this Convention or any other body could do to solve
8 this problem of the war between the two groups in our
9 society.
10 We must respect this motion otherwise it will be
11 considered that we are calloused toward the needs and the
12 rights of the disinherited and the underprivileged.
13 I urge you to reject the motion.
14 THE PRESIDENT: The Chair recognizes Delegate
15 Gleason as the final speaker in favor of the amendment. You
16 have slightly less than one minute.
17 DELEGATE GLEASON: Mr. President, I think that
18 those of us who will support the motion to reconsider are
19 entitled to ask a little fairness. We admit -- and I think
20 everyone on the floor admits -- that there are certain
21 business practices which are unfair, harmful and deleterious

1 to the public welfare. We will also have to agree that
2 there are certain labor practices, government practices,
3 professional practices, which are also harmful and
4 deleterious to the public welfare. Why have you not
5 included those practices in this amendment?
6 The reason they have not is that we vest the
7 legislature with plenary [illegible] powers to deal with them.
8 If they don't deal with them then we have the wrong
9 representation. That is why elections are provided for.
10 This thing does not deserve constitutional
11 status. I would hope that this thing be approved.
12 THE PRESIDENT: Any other delegate desire to
13 speak in opposition to the motion?
14 The Chair hears none.
15 DELEGATE PULLEN: Mr. President, I think this
16 belongs in the Constitution, and I base my arguments on
17 an amendment that I propose to introduce if I can get
18 90 percent of the convention to go along with it.
19 We cannot decide, it seems to me, what belongs
20 in the Constitution and what belongs in the legislature,
21 therefore I should like to read this to you. On page 4,

1 following line 19 of Section 13, Imprisonment for Debt, add
2 the following new section:
3 "Section ____. Effect of Delegation of Power
4 to the General Assembly.
5 All references in this Constitution to any
6 grant of power to the General Assembly to act by law or
7 by public general law, wherever situate and found, including
8 all such references reasnably overlooked, shall be, and are
9 hereby declared to be, utterly repugnant to this Constitution
10 and are hereby declared to be repealed and of no further
11 effect immediately upon the introduction of legislation in
12 any General Assembly designed and intended to carryout any
13 said requirement of this Constitution (any transitional
14 schedule of provisions herein to the contrary notwithstanding)".
15 Let us make up our minds what is in the
16 Constitution, and what is in the General Assembly. We have
17 put all sorts of things in here that some of you say
18 don't belong.
19 In my opinion this belongs in the Constitution
20 as much as 50 and 60 percent of the other things that we
21 have in there.

1 THE PRESIDENT: Are you ready for the question?
2 The Clerk will ring the quorum bell.
3 The question arises on a question to reconsider
4 the vote by which committee recommendation GP-4 was
5 adopted on second reading. A vote Aye is a vote in favor
6 of reconsideration. A vote No is a vote against
7 reconsideration.
8 This is not a vote on committee recommendation
9 GP-4 itself. If the motion to reconsider is carried, the
10 Chair will submit to you without further debate action
11 with respect to Committee recommendation GP-4. At the
12 present time you are voting only on the motion to
13 reconsider. A vote Aye is a vote in favor of reconsideration.
14 A vote No is a vote against.
15 Cast your votes.
16 Has every delegate voted? Does any delegate
17 desire to change his vote? The Clerk will record the vote.
18 (Applause).
19 There being 58 votes in the affirmative, and 70 in
20 the negative, the motion to reconsider is lost.
21 The Chair recognizes Delegate Powers.

1 DELEGATE POWERS: Mr. President, I move the
2 Convention resolve itself into a Committee of the Whole
3 for the purpose of resuming consideration of the general
4 orders of the day.
5 (The motion was duly seconded)
6 THE PRESIDENT: All in favor signify by saying
7 Aye. Contrary No.
8 The Ayes have it, and it is so ordered.
9 (Whereupon, at 12:20 p.m., the Convention
10 resolved itself into the Committee of the Whole)
11 (The mace was removed by the Sergeant-at-Arms)
12 THE CHAIRMAN: The Committee of the Whole will
13 please come to order.
14 The Committee of the Whole resumes consideration
15 of committee recommen dation LB-3. Will the pages please
16 distribute the amendment marked A. This is amendment 10 which
17 the Committee of the Whole has already acted on. The
18 amendment has been rejected.
19 Amendment 2 will be here from the print shop for
20 a few moments.
21 For what purpose does Delegate Koger rise?

1 DELEGATE KOGER: For a special privilege.

2 I would like to ask the convention to welcome

3 my baby daughter, Miss Mary Koger, who is a student at Ohio

4 University. (Applause).

5 THE CHAIRMAN: The amendment which is before

6 you is Amendment 2. It has not been distributed. It is

7 an amendment by Delegate Weidemeyer to strike all except

8 the first sentence of section 3.03b.

9 The Chair recognizes Delegate Weidemeyer to speak

10 to the amendment.

11 DELEGATE WEIDEMEYER: Mr. Chairman and

12 members of the committee. I would like to amend my

13 amendment so as to strike everything after the word

14 "-sentatives" on line 13 down to and including the word

15 "subdivisions" in line 21, and then strike from the last

16 sentence in line 23, "-according to these standards-".

17 THE CHAIRMAN: Is this in a printed form of amend-

18 ment?

19 MR. WEIDEMEYER: It is not, but on second

20 thought I would like to amend my amendment to that extent.

21 THE CHAIRMAN: Any objection to considering

1 amendment No. 2 modified so that it will provide for
2 striking in line 13, after the fraction of the word,
3 "-sentatives", all of lines 14 through 20 inclusive, the
4 first three words of line 21, and to strike from line
5 23 the words "according to these standards"?
6 The Chair hears no objection. The amendment
7 will be considered as so modified.
8 Mr. Weidemeyer, you may speak to the amendment.
9 DELEGATE WEIDEMEYER: My leaving in the first
10 sentence of section 3.03b, we assure the state that there
11 will be congressional districts, and that they will not
12 require congressmen to run at large, and also by striking
13 out in line 13 the following, "The difference between the
14 populations of the largest and smallest congressional
15 districts.'
16 Each congressional district shall consist of
17 adjoining territory and be compact in form. Due regard shall
18 be given to natural boundaries and the boundaries of
19 political subdivisions."
20 To take out this language from this provision
21 takes out these freezing provisions which would make it,

1 if left in there, almost prohibitive for the legislature
2 to act in many areas, and anyone who has had experience
3 and worked on the congressional redistricting bill, knows
4 what a tremendous job it is to keep within due bounds
5 and to try to please everybody.
6 When you say that they have got to be compact in
7 form and they have got to be contiguous, they have got to
8 have adjouning territory and they can't exceed ten percent
9 then sometimes you might get a very good congressional
10 district with everybody in the State happy where you had
11 11 or 12 percent variance, or you might be able to get them
12 with as much as 15. And when we were first working on
13 this, a lot of them thought that 15 was a fair basis
14 for variance, between the norm, either 15 percent under or
15 15 percent over, and the Supreme Court, as has been
16 pointed out, has not acted and has not said that it has to be
17 a certain perc entage, and I think it would be doing harm
18 and violence to the freedom and flexibility of the
19 legislative processes if we froze in a percentage.
20 Likewise, it is dangerous to try to say that in
21 every instance the areas should be contiguous because, as

1 you know, we now have southern Maryland, southern Anne Arundel
2 County with Calvert and St. Mary's tied across the
3 Chesapeake Bay with the counties of the eastern shore.
4 If you get into that, and that language is
5 construed that you can't have the intervening water area in
6 the congressional district, then that would mean that
7 we would have to start at the tip southern end of the
8 eastern shore, and work northward there. We would get a
9 complete revision in the next revamping, and it would upset
10 our state again.
11 All of these redistrictings for new congressmen
12 and new areas and bringing in new people creates a lot
13 of trouble, and I think the more flexibility we can give
14 to the legislature in this tremendous job, the better off
15 we will be, and therefore I think that the language that
16 I have asked to go out from line 13, after "-sentatives"
17 on down including the word "subdivisions" in line 21, will
18 lave this section where the legislature must set up
19 Congressional districts, and then if we leave in part of
20 the last sentence, to read "the boundaries of congressional
21 districts shall be established immediately prior to the

1 state-wide congressional election in 1972, and every tenth
2 year thereafter, we will have a logical mandate to the
3 legislature to redistrict immediately after the 1970
4 census, and if the Federal Government holds consistent,
5 we will have a census in '70, we will have one in '80, so that
6 would make it very consistent. We will have a good section
7 without having the freezing language left in that would
8 hamper and hamstring and make inflexible the law for
9 the activity of the legislature in this field.
10 I urge adoption of the amendment, Mr. President,
11 and hope that we can leave the legislature with something
12 with which they can work.
13 THE CHAIRMAN: Are there any questions of the
14 sponsor of the amendment? The Chair hears none.
15 Delegate Gallagher.
16 DELEGATE GALLAGHER: So the record will be
17 complete, will the reading clerk please read amendment No.
18 1, which was the amendment A?
19 MR. QUILLEN: Amendment No. 1 to committee
20 recommendation LB-3, by Delegates Gilchrist, Adkins, Carson,
21 Fox, Freedlander, Hostetter, and Rollins:

1 "On page 1 strike out all of section 3.03b.
2 Congressional Districts comprising lines 8 through 25,
3 inclusive."
4 THE CHAIRMAN: That is the amendment already
5 acted upon and rejected by a vote of 37 to 82.
6 Will the Clerk now please read amendment 2. This
7 is the amendment C. Amendment 2 has been modified. Please
8 follow the Clerk.
9 MR. QUILLEN: Amendment No. 2 to committee
10 recommendation LB-3, by Delegate Weidemeyer:
11 On page 1 section 3.03b, entitled Congressional
12 Districts, in line 13 after the period strike out the
13 remainder of this line and all of lines 14 through
14 "subdivisions" in line 21, and to strike "according to
15 these standards" in line 23.
16 THE CHAIRMAN: Delegate Gallagher.
17 DELEGATE GALLAGHER: I must respectfully
18 oppose the amendment offered by Delegate Weidemeyer, who
19 is concerned about freezing requirements in the
20 Constitution. I certainly am moved by the generosity which
21 he shows by including the requirement that the state must

1 be divided into congressional districts.

2 I would point out that the gentleman is really

3 giving away ice in the wintertime, because congress,

4 already, by amendment H.R. 2275, passed on November 30, has

5 provided in the 93rd Congress to more than one representative

6 under the act of June 18, 1929, shall be established by

7 law a number of districts equal to the number of

8 representatives to which each state is entitled, and the

9 representatives shall be elected only from districts so

10 established.

11 No district shall elect more than one

12 representative.

13 In actuality Delegate Weidemeyer is only

14 recognizing where Congress has already acted. It seems

15 to me the section would take the guts out of section 3.03b.

16 Let me read you what Judge Simon Sobeloff

17 had to say in the case of Maryland Citizens Committee

18 for Fair Congressional Redistricting for Tawes."

19 In the course of the hearing the Attorney

20 General of Maryland, after consultation with the Governor,

21 advised the court that in the light of the unsuccessful

1 efforts in the preceding 1964 session of the General
2 Assembly to achieve a constitutional redistricting law,
3 there was then no possibility of legislative action.
4 So I am suggesting to Delegate Weidemeyer even
5 when all the flexibility in the world was available to the
6 General Assembly of Maryland, it was of no avail, and
7 there were three unsuccessful attempts in a five-year
8 period to have the legislature pass a constitutional law,
9 none of which ever saw the light of day.
10 It seems to me that the least we can do is to give
11 them a constitutional set of standards to go by so they
12 will know the area in which we think they are expected to
13 act to discharge their duties responsibly to the people
14 of Maryland.
15 I would urge you to defeat this amendment which in
16 essence is no different from the one you just defeated.
17 THE CHAIRMAN: Any other discussion? Are you
18 ready for the question?
19 The Clerk will wring the quorum bell.
20 The question arises on the adoption of amendment
21 No. 2, a vote Aye is a vote in favor of the amendment. A

1 vote No is a vote against.

2 Cast your votes.

3 Has every delegate voted? Does any delegate

4 desire to change his vote? The Clerk will record the

5 jote.

6 There being 49 votes in the affirmative and

7 67 in the negative, the motion is lost, and the amendment

8 is rejected.

9 Are there any other amendments to section 3.03b?

10 Do you still desire to offer your amendment?

11 DELEGATE GILCHRIST: With the permission of the

12 co-sponsors, I will withdraw it, sir.

13 THE CHAIRMAN: : Any objection from the co-sponsors?

14 If not, the amendment will not be offered.

15 Delegate Fox, do you propose to offer your

16 amendment?

17 DELEGATE FOX: No, sir.

18 THE CHAIRMAN: Are th-re any other amendments

19 to section 3.03c? The Chair hears none.

20 Are there any amendments to section 3.19?

21 The Chair hears none. Are there any amendments to section

1 3.17ab?

2 DELEGATE SCANLAN: I have an amendment

3 designated amendment E to that section.

4 THE CHAIRMAN:: Just a second.

5 Pages will please distribute the amendment E.

6 This will be amendment No. 3. The Clerk will

7 read the amendment.

8 MR.QUILLEN: Amendment No. 3 to committee

9 recommendation LB-3, by Delegates Scanlan and Bothe.

10 On pages 2 and 3, section 3.17ab. Corporation

11 Charters, strike out all of lines 29 through 50, inclusive,

12 on page 1 and all of lines 1 through 9, inclusive, on page

13 2; and insert in lieu thereof the following:

14 "The provisions of Article Three, Section 48 of

15 the Constitution of 1867 shall remain in effect as part of

16 this Constitution."

17 THE CHAIRMAN:: Delegate Scanlan.

18 DELEGATE SCANLAN: Of all the wordy and prolix

19 provisions with which we have infiltrated the Constitution

20 thus far, none offends me quite so much as this. However

21 much I contemplate the necessity, I end up with an uneasy

1 feeling that it may not be necessary.

2 However, I will accept the words of lawyers more

3 competent in the relationship of the B&O tax exemptions

4 and the corporate laws of this state.

5 My own personal feeling is that the matter

6 could be handled in the schedule of legislation, and if

7 one had faith in the general assembly that the general

8 assembly wouldn't yield on the point, I think the matter

9 could safely rest there.

10 However, there appears to be some concern,

11 legitimate or not, that this wouldn't work out that way, and

12 that the matters must be dealt with in the constitution.

13 While I come to that reluctant conclusion, and

14 I am still unsure about it, let us deal with it in as succinct

15 a manner as possible, and not load down the constitution

16 with a provision which may soon become unnecessary if

17 Mr. Gallagher's prediction about the course of action

18 on the B&O as a result of the pending merger with the

19 C&O railroad is borne out.

20 My amendment would merely incorporate by

21 reference the present provisions of section 48 of article

1 3 of the Constitution of 1867 which are set forth at great
2 length and almost in hoc verba in the proposed section 3.17ab.
3 I have offended one of the rules of style that
4 we shall not incorporate by refererence in the Constitution.
5 However, to every rule there must be some exception, and
6 I say that the case of the B&O tax exemption is so unique,
7 so complicated, and stands so by itself, that it presents a
8 highly unusual situation, and I think we are entitled
9 to deal with it in a highly unusual manner. The manner
10 proposed by the committee is to clutter up the Constitution
11 with ancient verbiage.
12 The manner proposed is to make an exception to
13 the rule of style, and incorporate by reference all the
14 constitutional authority in section 48, article 3, and
15 transfer that, continuing it in effect as part of this
16 constitution.
17 In short, I think I have done in one sentence
18 what the committee proposes to do in nearly 300 words.
19 I urge that you support the amendment. You
20 will have yielded something of substance, and I think you
21 will have gained a little of form, not to mention style.

1 THE CHAIRMAN: Any questions?

2 DELEGATE RYBCZYNSKI: Point of order.

3 THE CHAIRMAN: State the point.

4 DELEGATE RYBCZYNSKI: I suggest that the amendment

5 is out of order for two reasons: No. 1, because of the very

6 reason that Delegate Scanlan mentioned. That is a matter

7 of style. I can't imagine any document as important as a

8 constitution being composed by references to other

9 documents, especially when the adoption of this one will put

10 the other one out of business.

11 No. 2, what we will be doing is voting on

12 something which we already have in identical language. It

13 will be a duplicate vote. In other words, by amendment

14 Delegate Scanlan wants us to vote on section 3.17ab,

15 worded exactly the same one, no changes whatsoever. The

16 substance is exactly the same.

17 I suggest that it is out of order.

18 THE CHAIRMAN: The Chair would rule that the

19 amendment is out of order.

20 Any further questions?

21 Delegate Case.

1 DELEGATE CASE: Delegate Scanlan, I can't
2 agree with Delegate Rybcznski's statement that section
3 48 of article 3 is exactly the same in substance with
4 the proposed section 3.17ab. And I think in this there may
5 lie the flaw in your amendment.
6 Section 48 in the present Constitution contains
7 an exception for laws dealing with municipal corporations.
8 That was taken out by the committee's recommendation. If
9 we vote to keep old section 48 in the new Constitution,
10 will it not fly in the teeth of the Local Government
11 provisions which we have already passed?
12 THE CHAIRMAN: Delegate Scanlan.
13 DELEGATE SCANLAN: I must confess on that point
14 that Mr. Case is right. I had forgotten that we had
15 eliminated the municipal corporation provision that was
16 formerly found in article 48, and that matter would have to
17 be handled somewhere else if my amendment were adopted.
18 My amendment is not directed at that particular
19 problem, and I think it could be rectified by other language.
20 THE CHAIRMAN: Delegate Chabot.
21 DELEGATE CHABOT: Delegate Case asked my question.

1 THE CHAIRMAN: Very well. Delegate Weidemeyer,
2 do you have a question?
3 DELEGATE WEIDEMEYER: No. I have a question to
4 ask Delegate Scanlan.
5 One redeeming feature of his amendment is this:
6 that it will require all those who have spoken so dis-
7 paragingly of our old Constitution to take another look
8 at it.
9 DELEGATE SCANLAN: It would have that incidental
10 benefit. I thank you for bringing it to my attention.
11 THE CHAIRMAN: Delegate Gleason, do you have
12 a question?
13 DELEGATE GLEASON: Yes.
14 THE CHAIRMAN: State the question.
15 DELEGATE GLEASON: You understand this provision
16 was also amended in 1891?
17 THE CHAIRMAN: Delegate Scanlan.
18 DELEGATE SCANLAN: I would accept -- I understand
19 that, and the intention of the amendment is to embrace
20 in this constitution the provisions of section 48,
21 article 3, as they stand as of the date of the enactment

1 of this Constitution. That will be my intention.

2 THE CHAIRMAN: Delegate Gleason.

3 DELEGATE GLEASON: No, but I think the chairman

4 of the committee on style ought to be informed of that fact.

5 THE CHAIRMAN: The chairman of the committee on

6 style will please note that it is the intention of amendment

7 3 that the reference to the Constitution of 1867 means the

8 Constitution of 1867 and all amendments in force as of the

9 date of the adoption of this Constitution.

10 Any further questions to the sponsor?

11 Delegate Gullett.

12 DELEGATE GULLETT: Perhaps this question might be

13 directed to the Chairman of the Committee of the Whole. If

14 this amendment is adopted as written, would anything prevent

15 the Committee on Style from lifting bodily article 3, section

16 48, and putting it right back into the present Constitution,

17 or is it your intention by this motion that we instruct the

18 committee not to do that?

19 DELEGATE SCANLAN: May Iat this point make a

20 modification to my amendment? I ask for unanimous consent

21 to amend it as follows: In short, I would strike all of

1 the lines beginning with the word "all" on line 35 on page
2 1 --
3 THE CHAIRMAN: What are you addressing our
4 attention to? Your amendment,or the committee recommendation?
5 DELEGATE SCANLAN: I am addressing your attention to
6 the effect of my modified amendment on the committee
7 proposal. Let me explain how I am going to amend,and then we
8 can state it in the proper language.
9 I intend to move to strike only that portion
10 of the committee proposal that begins with the word "all"
11 on line 35 of page 2 through line 9 of page 3. In other
12 words, my amendment now, if permitted to be modified,
13 would not be directed at the first sentence of section 3.17ab.
14 THE CHAIRMAN: The Chair is completely lost.
15 Are you suggesting an entirely new amendment in place of
16 your amendment 3, or are you modifying your amendment 3?
17 DELEGATE SCANLAN: I am trying to modify my
18 amendment 3.
19 THE CHAIRMAN: Tell me what language there would
20 be deleted,or changed.
21 DELEGATE SCANLAN: Strike out all of line 35,

1 beginning with the word "all".

2 THE CHAIRMAN: There is no line 35 on my

3 amendment 3.

4 DELEGATE SCANLAN: Oh. I will read my amendment

5 as modified:

6 On pages 2 and 3, sectin 3.17ab, Corporation

7 Charters, strike out all of line 35, beginning with the

8 word "all" through line 50 inclusive --" and then it

9 remains the same.

10 THE CHAIRMAN: The Chair is still lost.

11 What happens to lines 6, 7 and 8 of amendment 3?

12 DELEGATE SCANLAN: I didn't finish reading.

13 I'm sorry. " -- and insert in lieu thereof the following:"

14 The provisions of article 3, section 48 of the

15 Consitution of 1867 shall remain in effect as part of this

16 Constitution.

17 In short, my modification is ---

18 THE CHAIRMAN: You are striking through line

19 50 on page 2,and not striking anything on page 3?

20 DELEGATE SCANLAN: I see here that the amendment

21 as drafted referred to pages 1 and 2, when it should have

1 referred to pages 2 and 3, Mr.Chairman.

2 THE CHAIRMAN: Yes, I understand that. But you

3 did not makemention of any of the lines on page 3.

4 MR. SCANLAN: I thought I had. My bench mate says

5 I did. Perhaps the Chair didn't catch it.

6 THE CHAIRMAN: That is entirely possible.(Laughter

7 DELEGATE JAMES: The first time you did. The

8 second time you didn't.

9 THE CHAIRMAN: Just a second. Would your

10 amendment now read "On pages 2 and 3, section 3.17ab Corporate

11 Charters in line 35 strike out the words "all charters granted

12 and strike out all of lines 36 through 50 on page 2, and all

13 of lines 1 through 9 on page 3,and insert in lieu therof the

14 following --"?

15 DELEGATE SCANLON: That is correct,Mr. Chairman.

16 THE CHAIRMAN: Is there any objection to consider-

17 ing the amendment as modified? (Laughter)

18 There appears to be an objection, Delegate

19 Scanlan.

20 DELEGATE SCANLAN: In which case, then,Mr.

21 Chairman, I will stand on my original amendment and hope in

1 some way if the amendment passes that the change which I
2 was trying to make could be made.
3 I was trying to accommodate the section pointed
4 out by Mr. Case, where the previous reference to municipal-
5 ities was improper.
6 DELEGATE KOSS: May I point out that under the
7 accommodation he was attempting it seems to me that first
8 sentence would be repeated twice, since you were not
9 striking it, and then incorporating section 48.
10 THE CHAIRMAN: Delegate Scanlan.
11 DELEGATE SCANLAN: I think at this point I had
12 better retreat, and recast my language, but I shall return.
13 (Laughter).
14 THE CHAIRMAN: Do you withdraw your amendment,
15 Delegate Scanlan?
16 DELEGATE SCANLAN: Yes, I would like to keep
17 open the door that has been so liberally left ajar for others,
18 so that I could come back with my amendment.
19 THE CHAIRMAN: The Chair would like to conclude
20 consideration of this before we recess for lunch, if
21 you could work out the language.

1 DELEGATE SCANLAN: I could do it right here,
2 but I don't know about the boys in my row.
3 THE CHAIRMAN: Amendment No. 3 is withdrawn.
4 Are there any other amendments to section 3.17ab,
5 Delegate Gallagher?
6 DELEGATE GALLAGHER: Mr. Chairman, do you
7 consider it necessary to formally suggest that on line 30
8 the comma after the word "act" and the word "and" be deleted,
9 and on line 31 the comma will be deleted, or would style
10 take care of that?
11 THE CHAIRMAN: I think it would be well if style
12 understands that the sense of that clause would be expressed
13 if you deleted the comma,and word "and" in line 30, the comma
14 in line 31,and the comma after "character" in line 33.
15 The Committee on Style has noted it. You have
16 an amendment, Delegate Grant?
17 DELEGATE GRANT: Mr. Chairman, I have one question
18 that I wanted to ask the Chairman of the Committee in regard
19 to this because of the difference in the language between this
20 and this sectin 48. In the old section 48 -- directing your
21 attention to line 42 and 43, where you have put in the date

1 of December 3, 1891, in the old Constitution, it just
2 referred to the general assembly shall not alter or amend
3 the character of any corporation existing at the time of
4 the adoption of this article, and presumably the adoption
5 of this article was in '67, and not '91.
6 DELEGATE GALLAGHER: No, that is not correct.
7 THE CHAIRMAN: Delegate Gallagher.
8 DELEGATE GALLAGHER: The sentence beginning
9 "with the General Assembly" which exists on line 41 was
10 added by the 1890 General Assembly, and submitted to the
11 electorate and voted upon favorably on December 3, 1891, so
12 that entire sentence beginning with "The General Assembly" was
13 an 1891 Constitutional amendment to the earlier two
14 sentences which appeared in the 1851, '64 and '67
15 Constitutions.
16 THE CHAIRMAN: Any further questions, Delegate
17 Grant?
18 DELEGATE GRANT: I follow what you intend.
19 However, the wording in the old Constitution refers to
20 article, and not to amendment, and the adoption of the
21 article was in '67. The adoption of the amendment was in

1 '91. I just wanted to get the record straight as to exactly
2 what we meant.
3 DELEGATE GALLAGHER: You are suggesting that the
4 date should be earlier in time?
5 THE CHAIRMAN: Delegate Grant.
6 DELEGATE GRANT: I am suggesting that as the
7 present constitution reads, if it is the intention to
8 embrace the present constitutional language, the adoption
9 of the article was in '67, and it does not appear to be
10 conditioned upon the adoption of the amendment in '91 as
11 it is in your proposed document.
12 THE CHAIRMAN: Delegate Gallagher.
13 DELEGATE GALLAGHER: I see the difficulty, but
14 I would doubt that you could pass a constitutional amendment
15 in 1891 with respect to the conduct of corporations prior
16 to that time,and retroactively remove an exemption when
17 the statutory or constitutional authority did not exist
18 until 1891.
19 I really think the germane date is '91,the date
20 of the adoption of the amendment to what was then article 3,
21 section 48, with only the first two sentences.

1 THE CHAIRMAN: Delegate Grant.

2 DELEGATE GRANT: I still suggest,then,that that
3 be made abundantly clear on the record, the exact date
4 that was intended.

5 DELEGATE GALLAGHER: Yes, I will. And also I
6 will take a look at the acts of 1890, because I didn't
7 notice the use of the article in that act. It may have
8 been a carry-over after the constitutional amendment
9 was passed. A change may have been made.

10 THE CHAIRMAN: Delegate Gilchrist.

11 DELEGATE GILCHRIST: Mr. Chairmam and fellow
12 delegates, I am also interested in trying to get through
13 with this section. I would like to suggest to Delegate
14 Scanlan perhaps he could accomplish what he has in mind by
15 just adding the four words "except for municipal purposes",
16 then it reads exactly like it was.

17 Even though I am not for what you are suggesting,
18 I think we could put that in and vote on it, and perhaps
19 finish this article.

20 THE CHAIRMAN: Delegate Marion, for what purpose
21 did you rise?

1 DELEGATE MARION: I had a question for Chairman
2 Gallagher.
3 THE CHAIRMAN: Delegate Gallagher, will you
4 take the floor to yield to a question?
5 DELEGATE GALLAGHER: Yes, sir.
6 THE CHAIRMAN: Delegate Marion.
7 DELEGATE MARION: The date on 3.17ab is
8 December 3, 1891. The note in the copy of the Constitution
9 of 1867 indicates that that section 48 of Article III of that
10 constition was amended by Chapter 195, of the Acts of 1890.
11 ratified November 3, 1891.
12 I assume that was the date of the general
13 election. But rather than to have anyone feel if this might
14 be an erroneous date, the December date was the date it was
15 actually made effective by some further act.
16 Yes, the December date is the date of certification
17 b y the Governor.
18 THE CHAIRMAN: Delegate Gallagher, could the
19 Chair ask you a question that might have some bearing on
20 the Scanlan amendment?
21 DELEGATE GALLAGHER: Yes, sir.

1 THE CHAIRMAN: Perhaps your staff advisor could
2 listen to this question, because I am not sure whether you
3 researched it.
4 Is there doubt existing as to whether a legisla-
5 ture may by a public general law prohibit future legislatures
6 from amending corporate charters so that in the absence of
7 a provision such as that beginning on line 35, it would be
8 necessary for the legislature to make such a provision with
9 respect to every corporate charter granted?
10 DELEGATE GALLAGHER: Mr. Chairman, we haven't
11 researched the point, but I don't believe that one general
12 assembly could bind all future general assemblies. It would
13 seem to me that a future general assembly could repeal or
14 modify as it so desired, and I believe in answer to one
15 of the questions during the question period, I said that
16 because of that position, if you wanted to create this
17 particular sentence as a state policy, you could only do it in
18 a constitution. You couldn't rely upon the general assembly.
19 I presume you are now asking whether or not you
20 need a specific disclaimer every year, every time there was
21 a new general assembly.

1 THE CHAIRMAN: Or every time a corporate
2 charter was created by special act if there were any such.
3 DELEGATE GALLAGHER: Yes, sir, that certainly
4 would be a possibility. I don't know how ---
5 THE CHAIRMAN: This section, for instance,
6 doesn't apply to banks?
7 DELEGATE GALLAGHER: No, sir; it specifically
8 excludes it.
9 THE CHAIRMAN: It would be corrected by special
10 act, absent the provisions in line 35; in order to be safe,
11 would you have to include such a provision in every bank
12 charter thereafter granted?
13 DELEGATE GALLAGHER: In order to be safe, I think
14 I would recommend.
15 THE CHAIRMAN: Delegate Henderson.
16 DELEGATE HENDERSON: I want to ask Chairman
17 Gallagher a question:
18 I may be entirely wrong about this, but I just
19 had a notion that the date when an amendment takes effect
20 is the date when it is voted on, rather than the date
21 when it is certified.

1 Am I wrong in that? It seems to me that I have
2 seen the note that it was ratified on such and such a date
3 by the vote of the people. I just raise the point ---
4 DELEGATE GALLAGHER: The reason we used December
5 third, that was the date of the proclamation by the
6 Governor of the results of the November 3 election.
7 THE CHAIRMAN: Delegate Henderson, isn't the
8 question usually resolved by the act itself of submitting
9 the amendment? Doesn't it say it shall become active upon
10 ratification?
11 DELEGATE HENDERSON: I may be wrong. I thought
12 it was the vote of the people rather than the date of
13 certification. We might have it researched.
14 THE CHAIRMAN: Isn't that because of the provision
15 in the act of the general assembly submitting the amendment,
16 that it usually says it shall take effect upon the ratificatio
17 by the vote of the people?
18 DELEGATE HENDERSON: It may be. It should be
19 looked into.
20 DELEGATE GALLAGHER: I sent for the acts of 1890.
21 I looked at it to see if there were any prefatory language

1 which would help with the history of the section, and I
2 didn't inquire into what the act said about the effective
3 date. It should be here in a minute.
4 THE CHAIRMAN: Thank you.
5 Are there any further amendments with respect to
6 section 3.17ab?
7 Delegate Scanlan.
8 DELEGATE SCANLAN: I haven't naturally had the
9 time to prepare the modification of my amendment. I could
10 read it to the House,and if there was no objection perhaps
11 we could proceed on it If not, I don't want to delay
12 consideration.
13 THE CHAIRMAN: The Chair would suggest -- and
14 I think the Committee of the Whole would concur --that if the
15 amendment can be stated in a way so that it would be under-
16 standable, we could act on it. I would like to conclude
17 consideration of this recommendation before we recess for
18 lunch.
19 DELEGATE SCANLAN: Yes. The amendment is exactly
20 as it was previously modified, and read across the desk with
21 the exception that the follwing phrase is added in line 6 of

1 the amendment:

2 "With the exception of the first sentence thereof,-"

3 and then it would read as it is now:

4 " -- the provisions of Article Three, Section 48

5 of the Constitution of 1867 shall remain in effect as part

6 of this Constitution."

7 That is to accommodate the problem of permitting,

8 under the Constitution of 1867,the exceptions for municipal

9 purposes. That has been eliminated, and properly so,

10 in the Committee's first sentence of its report on 3.17ab.

11 So I would preserve the first sentence of the

12 committee's report, but ---

13 THE CHAIRMAN: I don't think that the amendment

14 as you stated does that. I had understood it to be the

15 converse, that you were preserving the first sentence of

16 Article Three, Section 48 of the Constitution of 1867, which

17 again may not ---

18 DELEGATE SCANLAN: I believe you have misconstrued

19 what I have said.

20 THE CHAIRMAN: The language was "with the

21 exception of the first sentence thereof". Is that what you

1 said?

2 DELEGATE SCANLAN: Yes. My amendment does not

3 attack the first sentence of the committee's report, in

4 other words. I do not attack ---

5 THE CHAIRMAN: Don't tell me what it does. Read me

6 your amendment again as you would have it.

7 DELEGATE SCANLAN: On pages 2 and 3, Section

8 3.17ab. Corporation Charters. Strike out "all charters

9 granted" on line 35 and lines 36 through 50, page 2, and all

10 of lines 1 through 9 page 3 inclusive, and insert in

11 lieu thereof the following:

12 "With the exception of the first sentence

13 thereof, the provisions of Article Three, Section 48 of the

14 Constitution of 1867 shall remain in effect as part of this

15 Constitution."

16 Have I made myself clear?

17 THE CHAIRMAN: That is what the Chair understood

18 you to say before,and that would mean that the first

19 sentence thereof refers to the first sentence of Article

20 Three, Section 48. The balance of the section is what

21 you are adopting by reference.

1 Is that correct, Delegate Scanlan?

2 DELEGATE SCANLAN: You are right.

3 THE CHAIRMAN: Is that your intention?

4 DELEGATE SCANLAN: No. I think I will retreat.

5 THE CHAIRMAN: Delegate Gallagher.

6 DELEGATE GALLAGHER: Mr. Chairman, I say with
7 all sympathy to D elegate Scanlan we went through this
8 exercise of trying to figure a better way to say it if it
9 had to be said; we finally came to the reluctant conclusion
10 that we had to do it the way you see it before you.

11 With respect to the question of the effective
12 date of the Constitutional amendment which was authorized
13 by the General Assembly by C hapter 195 of the Acts of 1890,
14 Section 2 of that Act says that the foregoing section hereby
15 proposed as amendment to the Constitution shall be at the
16 next general election held at this State submitted to the
17 legal and qualified voters thereof for their adoption and
18 selection pursuant to Article 14 of this State, and that
19 after the said election due returns shall be made to the
20 Governor of the vote for and against said proposed amendment
21 as directed by the said 14th Article of the Constitution.

1 The 14th Article of the Constitution says that
2 the votes cast for and against said amendments shall be
3 returned severally to the Governor. If it shall appear
4 to the Governor that such votes were cast in favor thereof,
5 the Governor shall by his proclamation declare the said
6 amendments, having received said majority votes, to have been
7 been adopted by the people of Maryland as part of the
8 Constitution therof, and thenceforth said amendments or
9 amendment shall be part of the Constitution.
10 It is not clear whether the "thenceforth" means
11 the date of the election, or the Governor's proclamation.
12 There is a case, Worman versus Hagan, at 78 Md.
13 152, which says upon the proclamation of the Governor that
14 the proposed amendment has received the majority of the vote
15 cast, it became as of that moment a part of the Constitution,
16 so it would appear without actually reading the case that it
17 is at the time the Governor says it has received the majority
18 of the votes, but I will research it further.
19 THE CHAIRMAN: Very well.
20 Delegate Scanlan, the Chair believes that the
21 amendment as you modified it does carry out what you have

1 indicated you wanted it to carry it out, as the Chair would
2 understand your amendment. As last modified, it would leave
3 in effect the first sentence of the committee recommendation
4 on page 2 in lines 29 to the middle of 35, and for the balance
5 of that substitute Article 3, section 48, omitting the
6 first sentence of that, and that is what I understood you
7 wanted to do.
8 DELEGATE SCANLAN: That is what I wanted to do.
9 I wasn't sure that I was doing that in our last exchange.
10 That is what I wanted to do.
11 THE CHAIRMAN: Is there any objection to consider-
12 ing the amendment as so modified?
13 The Chair hears none.
14 The amendment as modified would read as follows:
15 On pages 2 and 3 section 3.17ab, Corporation
16 Charters in line 35 strike out the words "all charters granted"
17 and strike out all of lines 36 through 50 inclusive on page
18 2 and all of lines 1 through 9 inclusive on page 3, and
19 insert in lieu thereof the following:
20 "With the exception of the first sentence thereof,
21 the provisions of Article 3 Section 48 of the Constitution

1 of 1967 shall remain in effect as a part of this Constitution.
2 The amendment will be considered so modified.
3 The Chair recotnizes Delegate Gallagher.
4 DELEGATE GALLAGHER: Mr. Chairman and ladies
5 and gentlemen of the Committee of the Whole: If brevity be
6 the soul of wit, this is the wittiest amendment of all,
7 as Mr. Scanlan continues his surgical operations.
8 I do think that anyone who is reading the
9 Constitution ought to have the advantage of knowing what
10 it is, and what the significance is of what he reads.
11 If Delegate Scanlan could provide a caboose
12 whereby one could say this was the B&O rider, or the B&O
13 amendment, I think it would be appropriately flagged, if I
14 could use more railroad terminology.
15 But under these circumstances, I think it is a
16 little less information than we want to impart. One of
17 the beauties of having this in a non-Elizabethan prose in
18 the Constitution is that those admirers of style and
19 grace and elegance will have an opportunity to compare
20 the flavor of the Constitution with that of 1867, and see
21 what a wonderful job the Style Committee did, so it would

1 stand as a kind of a permanent advertisement for
2 Constitutional change and rewriting, and for those serious
3 reasons I would oppose the adoption of the amendment.
4 THE CHAIRMAN: Delegate Beatrice Miller.
5 DELEGATE BEATRICE MILLER: Previously we added,
6 after the Constitution of 1867, and all the amendments in forc
7 after the adoption ---
8 THE CHAIRMAN: That was not added. It was a
9 direction to the Committee on Style to pick that up.
10 Delegate Bamberger.
11 DELEGATE BAMBERGER: Mr. Chairman, I am bothered
12 by what conflict there might be between this language and
13 the language of GP-12, which we adopted last night, which
14 says that the Constitution of 1867 shall cease to be effec-
15 tive on July, 1968, except as provided in the schedule of
16 transitional provisions.
17 THE CHAIRMAN: I don't think we adopted GP-12.
18 It was read across the desk. It hasn't been considered.
19 Delegate Sherbow.
20 DELEGATE SHERBOW: I think it was 80 days ago I
21 introduced this as a proposal,and I have been waiting with

1 trepidation for this moment when somebody would want to
2 get rid of what may be old, archaic language, but involves
3 millions of dollars, and step into something that we are
4 just not too sure of.
5 It reminds me of a beautiful picture, Whistler's
6 Mother. It is good and worth while, and a lot better than
7 some of the impressionsts' pictures that I don't understand.
8 I am sure it is as good as the miniskirted pictures, which
9 I am sure all of us do.
10 Let us hold to this, since we know what it means.
11 Whoever prints it will have to put the other part in anyway.
12 I urge you to vote against the amendment.
13 THE CHAIRMAN: Ring the quorum bell.
14 The question arises on adoption of committee
15 recommendation No. LB-3 as modified. A vote Aye is
16 a vote in favor of the amendment. A vote No is a vote
17 against.
18 Cast your vote.
19 Has every delegate voted? Does any delegate
20 desire to change his vote?
21 The Clerk will record the vote.

1 There being 12 votes in the affirmative, and 103
2 in the negative, the motion fails,and the amendment is lost.
3 Are there any other amendments to Section 3.17ab?
4 Delegate Gallagher.
5 DELEGATE GALLAGHER: This is not an amendment, but
6 Chapter 195 of the Acts of 1890 repealed Article 3, section
7 48 in its entirety, and substituted the same language
8 again, addding the third sentence to the grandfather clause
9 relating to the B&O Railroad, so when reference is made to
10 the effective date of this article, it is in fact the 1891
11 approval date for the entire Article 3, Section 48.
12 THE CHAIRMAN: Thank you. You are going to verify
13 that date, whether it should be November or December, 1981?
14 DELEGATE GALLAGHER: Yes.
15 THE CHAIRMAN: The question arises on the
16 approval of Committee Recommendation LB-3. Is there any
17 discussion? Are you ready for the question?
18 The Clerk will ring the quorum bell.
19 The question arises on the approval of Committee
20 Recommendation LB-3. A vote Aye is a vote in favor of the
21 approval of the committee recommendation. A vote No is a

1 vote against.

2 Cast your vote.

3 Has every delegate voted? Does any delegate

4 desire to change his vote?

5 The Clerk will record the vote.

6 There being 112 votes in the affirmative,and

7 2 in the negative, Committee Recommendation LB-3 is approved.

8 The Chair recognizes Delegate Powers.

9 DELEGATE POWERS: Mr. Chairman, I move that the

10 Committee of the Whole rise, and report the adoption of

11 the Committee Recommendation No. LB-3,as amended.

12 (The motion was duly seconded)

13 THE CHAIRMAN: All in favor signify by saying

14 Aye. Contrary No. The ayes have it, and it is so ordered.

15 (Whereupon,the Committee of the Whole rose, and

16 the Convention reconvened.at 1:15 o'clock p.m.)

17 (The mace was replaced by the Sergeant-at-Arms)

18 THE PRESIDENT: Delegate Powers, the Parliamentarian

19 said he thinks your motion said the approval of the

20 Committee Recommendation as amended. It was not amended, and

21 the record will be corrected accordingly.

1 The Chair reports that the Committee has
2 considered Committee Recommendation LB-3, and has approved
3 the recommendation. Committee Recommendation LB-3 ---
4 For what purpose does Delegate Clagett rise?
5 DELEGATE CLAGETT: I believe striking the comma
6 and the word "and" would constitute amendment.
7 THE PRESIDENT: That was done as an instruction to
8 the Committee on Style.
9 Committee Recommendation LB-3 is referred to the
10 Committee on Style, Drafting and Arrangement.
11 Are there any announcements by committee chairmen
12 necessary to be made before lunch?
13 Delegate Mudd?
14 DELEGATE MUDD: Mr.President,may I remind the
15 members of the Committee on the Judicial Branch that we will
16 not have a meeting at recess, but may I have their views
17 on the memo that was circulated this morning,and I would
18 appreciate their idea as to the optional language that
19 we have to adopt, and communicate that to me before we
20 reconvene, please?
21 THE PRESIDENT: Any other announcements?

1 The Chair wants to call your attention to the
2 fact that Committee Recommendation LG-1 and the report of
3 the Committee on Style with respect thereto will be on the
4 agenda for action tomorrow. This means second reading.
5 I call your attention to it so that you may
6 prepare any amendments that you may desire in accordance with
7 the policy heretofore announced.
8 Delegate Gallagher:
9 DELEGATE GALLAGHER: Mr. President, the Committee
10 on the Legislative Branch will meet immediately after this
11 recess.
12 THE PRESIDENT: Very well.
13 Delegate Powers, there is another report of the
14 Committee on Style to be on the agenda tomorrow. I think it
15 is ---
16 DELEGATE POWERS: That would be Committee Recomm-
17 endation GP-3.
18 THE PRESIDENT: Very well. On the agenda for
19 tomorrow will be the second reading on Committee Recommendation
20 GP-3,and Committee Recommendation LG-1.
21 Any other announcements?

1 Any delegates who were not present at roll call
2 may indicate their presence on supplemental roll call now.
3 The Clerk will record the supplemental roll call.
4 The Chair recognizes Delegate Powers.
5 DELEGATE POWERS: Mr. President, I move that
6 we recess until 2:20 o'clock.
7 (The motion was duly seconded)
8 THE PRESIDENT: All in favor signify by saying
9 Aye. Contrary No. The Ayes have it, and it is so ordered.
10 We will reconvene at 2:20 o'clock.
11 (Whereupon, at 1:20 o'clock, p.m., the Convention
12 recessed until 2:20 o'clock, p.m., of the same day.)
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1 AFTERNOON SESSION

2 December 20, 1967 - 2:30 p.m.

3 THE PRESIDENT: The Sergeant-at-Arms will clear

4 the aisles and close the door.

5 The Convention will please come to order.

6 (Whereupon, there was a roll call.)

7 THE PRESIDENT: Has every delegate answered the

8 roll call? The Clerk will record the roll call.

9 Reports of Committees. Report of the Committee

10 of the Whole No.18. The Clerk will read the report.

11 MR. QUILLEN: Report of the Committee of the

12 Committee of the Whole No. 18 covers matters in Committee

13 Report SF-1 which concerns omission from Article III,

14 Section 35(a) of the present Consti tution.

15 THE PRESIDENT: The report has heretofore been

16 referred to the Committee on Style, Drafting and Arrangement.

17 The Clerk will read the report of the Committee of the Whole

18 No. 19.

19 MR. QUILLEN: Report of the Committee of the

20 Whole No. 19 covers matters in Committee Report No. EB-1, con

21 cerning the Board of Public Works, the office of Comptroller,

1 office of Treasurer, the office of Attorney General and
2 the offices of Secretary of State, Coroners, Elisors,
3 Notaries Public, Surveyors, and State Librarian.
4 THE PRESIDENT: The Chair was in error in
5 referring to the report of the Committee of the Whole No. 18.
6 It was not referred to the Committee on Style; it was
7 adopted by the Convention heretofore.
8 The report of the Committee of the Whole No.19
9 was also presented and read and acted upon heretofore.
10 The report of the Committee of the Whole No. 20.
11 The Clerk will read the report.
12 MR. QUILLEN: The report of the Committee of the
13 Whole No. 20. This report covers matters in Committee
14 Report No. EB-1m a report on Recommendation No. 1 of
15 Committee Report No. EB-1 concerning the Board of Public
16 Works.
17 THE PRESIDENT: The report of the Committee of
18 the Whole No. 20 was heretofore presented and read but not
19 acted on.
20 Memorandum from Delegates Bothe and Morgan.
21 MR. QUILLEN: Memorandum from Delegates Bothe

1 and Morgan, Subject R&P-1.

2 The complete text of Section 7 of the National

3 Labor Relations Board as amended by the Taft-Hartley Act

4 is as follows:

5 THE PRESIDENT: The memorandum will be received

6 and distributed.

7 The Committee of the Whole Reports Nos. 19 and

8 20 were heretofore acted upon by the Convention on

9 December 13 and read across the desk now merely to be

10 entered upon the journal.

11 Are there any other motions or resolutions? The

12 Chair recognizes Delegate Powers.

13 DELEGATE POWERS: Mr. President, I move the

14 rules be suspended and the calendar be amended so that

15 we may consider in the Committee of the Whole this afternoon

16 Committee Recommendation No. CP-12.

17 THE PRESIDENT: Is there a second?

18 (The motion was duly seconded.)

19 THE PRESIDENT: Any discussion? Are you ready

20 for the question?

21 The question arises on the motion to amend the

1 calendar so as to permit consideration this afternoon by
2 the Committee of the Whole of Committee Recommendation
3 GP-12. All in favor signify by saying "aye"; contrary,
4 "no". The "ayes" have it, and it is so ordered.
5 The Chair recognizes Delegate Clagett.
6 DELEGATE CLAGETT: Mr. Chairman, I rise to a
7 point of personal privilege.
8 THE PRESIDENT: State the privilege.
9 DELEGATE CLAGETT: Mr. Chairman, and ladies and
10 gentlemen of the Convention, I would call your attention
11 and ask that you recognize one of our most distinguished
12 Marylanders, the Chief Judge of our Maryland Court of
13 Appeals, the Honorable Hall Hammond, in the north balcony.
14 THE PRESIDENT: We are delighted to have you.
15 (Applause.)
16 THE PRESIDENT: Delegate Beachley.
17 DELEGATE BEACHLEY: Mr. Chairman, I rise to a
18 point of personal privilege. I would like you to extend
19 your customarily warm welcome to Mr. William D. Klopper,
20 Assistant of Public Relations from the Potomac Edison
21 Company of Hagerstown, Maryland. He is seated on the

1 balcony directly behind the podium.

2 THE PRESIDENT: The Chair recognizes Delegate

3 Powers.

4 DELEGATE POWERS: I move the Convention resolve

5 itself into the Committee of the Whole so that we may

6 resume consideration of the general orders of the day.

7 THE PRESIDENT: Second?

8 (Whereupon, the motion was seconded.)

9 THE PRESIDENT: All in favor signify by saying

10 "aye"; contrary, "no". The "ayes" have it. It is so

11 ordered.

12 (Whereupon,the mace was removed by the Sergeant

13 at Arms.)

14 (Whereupon, at 2:38 p.m., the Convention resolved

15 itself into a Committee of the Whole.)

16 THE CHAIRMAN: The Committee of the Whole will

17 please come to order.

18 The next item for consideration is Committee

19 Recommendation JB-2.

20 The Chair recognizes Delegate Mudd, Chairman

21 of the Committee on the Judicial Branch, and asks that he

1 come forward.

2 DELEGATE MUDD: Mr. Chairman, ladies and
3 gentlemen of the Committee, the Committee Recommendation
4 JB-2 is one short paragraph. Like Chairman Gallagher, I
5 would like to say, as I am sure I can, that this is the
6 final and last recommendation of the Committee on the
7 Judicial Branch, and with the adoption of this recommendation
8 we hope your work in reference to the judicial system of
9 Maryland will be complete.

10 This section merely mandates in the Constitution
11 the obligation of the State to assume full financial
12 responsibility for the operation and administration of the
13 judicial system as has been adopted by your favorable
14 consideration of Committee Recommendation JB-1.

15 The language of this section is this: "The cost
16 of operation and administration of the Judicial Branch of the
17 State of Maryland shall be borne exclusively by the State
18 and all revenues derived from the operation and administra-
19 tion of the Judicial Branch shall enure to the State."

20 In presenting Recommendation JB-1, we did
21 represent to the Committee of the Whole that it was the

1 intent of the Committee on the Judicial Branch that the
2 total financial responsibility of this statewide uniform
3 unified system be the responsibility of the State and not,
4 as now, a divided responsibility of the local political
5 subdivisions and the Stat e of Maryland.
6 At that time we inadvertently omitted to include
7 in our Committee Recommendation JB-1 a firm mandate that
8 this cost be borne exclusively by the State.
9 We did discuss this phase of the matter, or at
10 least our staff advisor did, I am informed, with the
11 staff advisor of the Committee on Finance and Taxation.
12 I hasten to say,however, that the comment in our supporting
13 memorandum that this Committee of State Finance and
14 Taxation failed to provide in its recommendation a mandate
15 upon the State to assume this responsibility is in no
16 way intended by us as any criticism of that very able
17 committee. The oversight was ours, and we assume that
18 responsibility and are now suggesting to you favorable
19 consideration of Committee Recommendation JB-2 as an
20 additional section in the Constitution, but leaving it to
21 Style and Drafting to say whether, appropriately, this

1 section should be offered as part of Article V or some other
2 section of the Constitution.
3 In our supporting memorandum we have given you
4 the benefit in capsule form of the facts and figures
5 available to our Committee in the area of cost. We are
6 frank to admit that figures therein contained are incomplete
7 and estimates, only.
8 The figures are incomplete because our
9 investigation developed that no one anywhere in the State of
10 Maryland now knows the total cost of operating the judicial
11 system in this State.
12 The cost is shared. The information available
13 comes from reports made from various branches of the
14 Judiciary, and it is our information that no reports are
15 forthcoming from some areas of the State by some part-time
16 judges. Accordingly, it seems definite that the total
17 cost as now shared by the State with the political sub-
18 divisions cannot be assembled on the basis of the reports
19 heretofore made, and to the extent that it has been reported
20 and assembled, these figures of course represent an
21 estimate, because the new system approved by this Committee

1 contemplates the ultimate phasing out of the Justice of
2 the Peace or Trial Magistrate system into a District
3 Court system for the State, and which cannot be accom-
4 plished until 1971.
5 With those explanations, I say that the Committee
6 memorandum does contain the best information available as
7 to the amount of money we are presently considering, but
8 in our humble view the amount involved is not the real
9 question before the Committee as this recommendation
10 contemplates what is now being spent collectively by the
11 State and political subdivisions will, in the future, be
12 paid entirely by the State, notwithstanding our inability
13 to give you complete and accurate figures. It is
14 consistent with our recommendation that the State bear this
15 burden.
16 Only can the system which you have approved
17 for the State of Maryland operate efficiently and to best
18 advantage if the State and the State alone assumes the
19 financial burden. We therefore respectfully ask favorable
20 action by this Committee and approval of Recommendation
21 JB-2 in order to confirm and mandate in the Constitution

1 the obligation of the State to bear the total cost of the
2 judicial system as we represented in presenting JB-1 was
3 our intention, and as is obviously necessary in order for
4 the statewide system of uniform jurisdiction to properly
5 and efficiently function.
6 With that brief explanation, Mr. Chairman, I
7 will attempt to answer any questions there may be.
8 THE CHAIRMAN: Are there any questions of the
9 Chairman of the Committee? Delegate Weidemeyer.
10 DELEGATE WEIDEMEYER: Mr. Chairman, in line 10
11 where it says "shall be borne exclusively by the State",
12 do you intend that that language would preclude supple-
13 mentation by the counties?
14 DELEGATE MUDD: Absolutely, Delegate Weidemeyer,
15 and in our Committee Recommendation JB-1 we specifically
16 provide, in dealing with the judges, that the present
17 supplementation by the local subdivisions of judicial
18 salaries shall cease.
19 THE CHAIRMAN: Are there any other questions?
20 Delegage Clagett.
21 DELEGATE CLAGETT: Delegate Mudd, why is this

1 provision necessary where we have provided that there shall
2 be a judicial budget which shall be submitted along with
3 the governor's budget to the General Assembly?
4 DELEGATE MUDD: We are mindful of the provision
5 in the article already adopted, Delegate Clagett, for the
6 judicial budget. We felt this was necessary, out of an
7 abundance of caution, to mandate the requirement the state
8 provide the funds set forth in the budget.
9 THE CHAIRMAN: Are there any other questions of
10 the Committee chairman? Apparently there are none.
11 Delegate Mudd, if you will return to your seat,
12 we will consider the Committee Recommendation.
13 Are there amendments to Committee Recommendation
14 JB-2? The Chair hears none. The Chair has no amendments.
15 The question therefore arises on the approval of
16 Committee Recommendation JB-2. Are you ready for the
17 question? The question arises on the approval of Committee
18 Recommendation JB-2. A vote "aye" is a vote in favor of the
19 recommendation. A vote "no" is a vote against. Cast
20 your vote.
21 (Whereupon, a roll call vote was taken.)
THE CHAIRMAN: Has every delegate voted? Does an

1 desire to change his vote?

2 The Clerk will record the vote. There being

3 90 votes in the affirmative and four in the negative,

4 the Committee Recommendation JB-2 is approved.

5 The next item on the calendar for the Committee

6 of the Whole is resumption of the consideration of

7 Committee Recommendation R&P-2, and specifically sections

8 10, 11, and 13.

9 The Chair recognizes Delegate Kiefer, Chairman

10 of the Committee, and requests that he come forward to the

11 reading desk.

12 DELEGATE KIEFER: Mr. Chairman, ladies and

13 gentlemen of the Committee, last week in considering

14 Recommendation No. 10 to the R&P-2 recommendation -- that

15 is Section 10, Criminal Jury, Judge of Law and Fact -- this

16 Committee voted to abolish this section. However,

17 apparently some questions were raised with respect to the

18 effect of this upon the ability of a judge to direct a

19 verdict of guilty in a criminal case.

20 This Committee was asked to research this and to

21 report back to this group.

1 Now, I always get in the position where I am
2 presenting something and I have someone sternly looking
3 down on me -- last week it was a whole bunch of labor
4 people; this afternoon it is Judge Hammond, and I only need
5 one of him. Nevertheless, I have to say this to you.
6 There were apparently two independent studies made, and it
7 seems to be quite conclusively the situation that a judge
8 cannot direct a verdict of guilty in a criminal case where
9 the defendant has pleaded not guilty and there is any
10 question at all or dispute of the fact. This is a unanimous
11 situation, apparently.
12 A situation which is slightly different is the
13 case where there is no dispute at to the fact and where
14 the defendant in effect admits the facts. Then it is still
15 the majority opinion, and a strong majority opinion, that
16 this does not then give the judge leave to direct a verdict
17 of guilty for the defendant. There is some authority the
18 other way, but it is rather small.
19 Now, purely by hearsay, and I say it with Judge
20 Hammond looking at me, I understand it is his informal
21 opinion that this is not possible, also. The question that
may disturb you more, however, is whether or not a judge in

1 his instructions to the jury or in his conduct of the trial
2 could so indicate or make statements or act in such a way
3 that a jury would get from him the distinct impression
4 as to the guilt of the defendant, whether he could make
5 remarks or whether he could instruct the jury along these
6 lines.
7 This seems to be pretty universally not the
8 situation, and it would be a violation of due process.
9 We had a very recent case in Maryland, Elmer v.
10 State of Maryland, in which a defendant in I think it was
11 Harford County, was involved in a situation where the judge
12 was asked to state and did state that the particular witness
13 was hostile. This was held to be a reversible error
14 prejudicing the jury.
15 The judge who wrote the opinion probably could
16 explain more fully, if this is necessary. I am most relieved
17 to see that back here are Delegates Bothe and Willoner.
18 Again if there are any specific questions with respect to
19 this, both of them have not only done a considerable amount
20 of research on this, but they were on opposite ends of
21 last week's debate.

1 The sum and substance of what I am saying to
2 you, ladies and gentlemen, is simply this. There seems to
3 be no real reason to be concerned about a judge being
4 able to direct a verdict of guilty in a case involving
5 a criminal proceeding. With this language or provision the
6 jury would be the judge of the law and fact, as well, in
7 criminal cases is eliminated from the Constitution. You have
8 eliminated it by your last vote, and that is the only question
9 I know of that has been raised.
10 There may be other questions people want to ask
11 or there may be comments that Delegates Willoner or Bothe
12 will want to make. They have been the people who have been
13 making a particular special study of this thing, and since
14 we all want enlightenment, it might be useful, Mr. Chairman,
15 if I ask Delegate Willoner if there is anything he wants
16 to add.
17 THE CHAIRMAN: First, let's see if there are any
18 questions of the Chairman.
19 Are there any questions of the Chairman with
20 respect to section 10? Delegate Miller.
21 DELEGATE B. MILLER: I am not quite sure. Is it

1 the Committee Chairman's recommendation that we stand with
2 with our previous consideration or that we reconsider the
3 question?
4 DELEGATE KIEFER: Well, this is a matter -- I am
5 answering a technical question. If you want my personal
6 opinion, I haven't found that carries considerable weight.
7 THE CHAIRMAN: I think she is asking for the
8 recommendation of the Committee.
9 DELEGATE KIEFER: The Committee recommended that
10 this be continued in the Constitution, section 10,
11 Recommendation No. 10. This group has voted it out, and
12 all I am doing now is reporting back further research to
13 you.
14 It was the Committee's recommendation that it be
15 retained.
16 THE CHAIRMAN: Delegate miller, do you have a
17 further question?
18 DELEGATE KIEFER: If I might say one other thing,
19 it was rejected 68 to 46, with 28 not voting.
20 THE CHAIRMAN: Delegate Kiefer, maybe I can get
21 at what Delegate Miller wants by asking the question in a

1 little different way.

2 Has the result of the subsequent research in any

3 way changed the opinion of the Committee, or your opinion

4 as Chairman of the Committee, as to the desirability or

5 undesirability of section 10?

6 DELEGATE KIEFER: The Committee has not met, as

7 such, on this point. It was my understanding that we were

8 to meet and reconsider this thing. We were to meet and

9 further report to this group as to what the situation was.

10 I would presume that it does not in any way

11 affect the Committee's recommendation originally. If you

12 want my own personal feeling about it, I did not vote to

13 retain this in the first place, for what that is worth.

14 THE CHAIRMAN: I still don't think you have

15 answered the question.

16 Has the research done since the vote of the other

17 day been such as to indicate any change in the opinion of

18 the Committee or your opinion?

19 DELEGATE KIEFER: The Committee has not met --

20 THE CHAIRMAN: I understand that. The question

21 is whether the research is such as to indicate any change

1 in the views of the Committee.

2 DELEGATE KIEFER: I can't speak for the rest of

3 the Committee. All I can say, as far as I am concerned, it

4 doesn't change any views at all.

5 THE CHAIRMAN: Delegate Bothe.

6 DELEGATE BOTHE: Mr. Chairman, as a member of

7 the Committee and one of the sponsors of the amendment which

8 may be reconsidered here today, I want to state that I have

9 developed considerable reservations about the decision which

10 the Committee of the Whole reached the other day to which I

11 would be happy, and probab ly will speak at some point during

12 this debate, but I sought to answer Delegate Miller's questio

13 in that manner.

14 THE CHAIRMAN: Thank you.

15 Are there any further questions to the Committee

16 Chairman with respect to section 10?

17 Very well, the next section that was retained was

18 section 11.

19 DELEGATE KIEFER: This section now reads, as

20 amended, "No person shall be held to answer for a felony

21 unless on indictment of a grand jury except in cases arising

1 in the militia while in actual service."

2 This Committee voted 60 to 49, with 33 abstaining,

3 to adopt this recommendation as amended. The question has

4 been raised, apparently from further research, as to what

5 effect if any this would have on the present status of the

6 law.

7 The answer is it would have no effect whatsoever

8 on the present procedures as set forth in the rules of the

9 court. What it does do, and has never been done b efore, is

10 lock into or put into the Constitution the absolute right

11 of an accused to have an indictment by grand jury unless

12 he waives it in all felony cases.

13 Now, that is the practice. I personally have

14 talked to Mr. Moylan in Baltimore City. He has no

15 objection to this. He thinks this is probably a good thing

16 that it would be in the Constitution, but the decision here

17 is whether you want to make this a constitutional matter

18 or whether you do not.

19 I can give you some arguments that have been

20 developed for and against it, if this might be helpful.

21 This is a result of purely the research people's conclusions.

1 The grand jury serves as protection against
2 over-zealous prosecuters. It requires prosecuters to
3 present facts to an array of citizens and secure their
4 endorsement before a person must stand trial on criminal
5 charges. The State, therefore, must satisfy certain
6 minimum standards.
7 Inasmuch as a grand jury proceeds in secrecy,
8 there is no publicity until and unless an indictment is
9 returned, thus offering protection for a person suspected
10 of crime. There is no publicity unless the grand jury finds
11 that there is probable cause that the suspect committed the
12 offense.
13 The secret proceedings facilitate obtaining
14 witnesses to testify against a suspect. Furthermore, it
15 prevents the suspect from obtaining information that would
16 enable him to suborn testimony b efore the grand jury or
17 threaten witnesses.
18 Fourth, of course, is the basic concept that
19 I think most people have experienced, and I know a number
20 of judges have mentioned to me that there are times when a
21 grand jury refuses to follow a prosecutor's recommendation

1 b ecause they have found the evidence is not enough, or too
2 flimsy, and a person is therefore not subjected to trial.
3 The arguments against it have been noted:
4 First, grand juries are poor protections for
5 persons suspected of crime. They usually ruber-stamp
6 prosecutorial desires of obtaining indictments. Prosecutors
7 are permitted to introduce hearsay evidence and other
8 evidence that would be inadmissible in a court of law.
9 Second, any gains in the administration of justice
10 resulting from the secrecy of grand jury proceedings are
11 momentary. Evidence must be presented at trial in an open
12 court. Furthermore, the grand jury system is susceptible
13 to abuses by allowing prosecutors to carry on their work
14 free of public scrutiny and without basic safeguards being
15 afforded those accused of crime.
16 Third, the grand jury originated hundreds of years
17 ago in England and used to be the trier of cases, as well as
18 the accuser of persons. It came to this country as part
19 of the common law.
20 Fourth -- and this is something you probably want
21 to know -- approximately 26 states provide for indictments,

1 with certain exceptions, by grand juries in their
2 constitutions. Many of these states also permit the
3 legislatures to abolish grand jury proceedings, if they
4 want.
5 Whether you keep this in or take it out, it would
6 have no effect on the grand juries as they are retained in
7 the system generally with respect to their actions in
8 carrying on investigations and things of that sort. We are
9 talking purely about indictments in felony matters.
10 Again, these things have been prepared too
11 recently to have had a committee meeting and to vote, but
12 I would feel that it would not make any material change
13 because these matters were gone into quite thoroughly before
14 the Committee made its recommendation.
15 THE CHAIRMAN: Are there any questions of the
16 Committee Chairman? Delegate Bennett.
17 DELEGATE BENNETT: Isn't it true, Mr. Kiefer,
18 that one of the strongest arguments against the grand
19 jury procedure is that it delays action on the case, results
20 in holding people in jail for long periods of time, and also
21 clogs the whole judicial machinery?

1 DELEGATE KIEFER: Well, if you are asking me
2 this, I can't give you a firm answer because I simply
3 don't know, except that in the City of Baltimore,
4 according to Judge Moylan, it does not disrupt their
5 criminal practice or the criminal procedure.
6 THE CHAIRMAN: Delegate Bamberger.
7 DELEGATE BAMBERGER: Delegate Kiefer, isn't it
8 true in Baltimore City there is a grand jury sitting at all
9 times, while in most of the counties the grand jury only
10 sits at particular times and for limited sessions?
11 DELEGATE KIEFER: Yes.
12 THE CHAIRMAN: Delegate Bamberger.
13 DELEGATE BAMBERGER: But isn't it also true
14 that under this provision an accused could also waive his
15 right to an indictment by the grand jury, and the State
16 does not have any right to require an indictment?
17 DELEGATE KIEFER: Yes, and thank you for making
18 that mention. I did want to say that was one additional
19 point that we did research carefully to be sure about.
20 There is apparently no question about it. Again I checked
21 this with Mr. Moylan, and in the Federal practice where

1 there is a constitutional provision the right to waive is
2 absolute.
3 THE CHAIRMAN: Delegate Carson.
4 DELEGATE CARSON: Mr. Kiefer, the right to waive
5 in the Federal system is not absolute. In capital cases
6 one may not waive indictment by grand jury, but in all
7 other cases one may. This is a matter both of Federal
8 rules and Federal statute.
9 The Supreme Court in other Federal cases has
10 clearly indicated it was constitutionally permissible to
11 waive this right.
12 THE CHAIRMAN: Are there any other questions?
13 Delegate Case.
14 DELEGATE CASE: Mr. Chairman, a point of
15 information. Are we discussing here Amendment 18 to R&P-2?
16 THE CHAIRMAN: In effect, yes, because Section 11
17 was amended by striking all of what is in the recommendation
18 and inserting what is in Amendment 18, so the language
19 before you is that of Amendment 18.
20 DELEGATE CASE: I don't see the word "felony" in
21 my copy of Amendment 18.

1 THE CHAIRMAN: The amendment was modified to
2 strike the words "capital or otherwise infamous crime" in
3 line 7, and substitute the word "felony".
4 DELEGATE KIEFER: Which makes it consonant with
5 the present practice.
6 THE CHAIRMAN: Delegate Case, did you have another
7 question?
8 DELEGATE CASE: The word "felony" comes in on
9 line 7, striking out "capital or otherwise infamous crime"?
10 Those words are out, and the word "felony" is in?
11 THE CHAIRMAN: That is correct.
12 Delegate Hargrove.
13 DELEGATE HARGROVE: Delegate Kiefer, did you get
14 any information on how many cases the grand jury, say in
15 Baltimore City, threw out, or wherein indictment was
16 returned where the State's Attorney didn't want an indictment
17 returned? Do you have any information as to the numb er of
18 times that happened within a year, say?
19 DELEGATE KIEFER: No, sir, I didn't inquire. I
20 haven't any comment on that. I don't know.
21 THE CHAIRMAN: Delegate Hargrove.

1 DELEGATE HARGROVE: Also, did your committee
2 determine whether or not a State's Attorney has to take a
3 charge to the grand jury unless he so desires?
4 DELEGATE KIEFER: It is my understanding, and I am
5 not an expert in criminal law, under the court rules which
6 I have read -- I have read what the definitions are -- in
7 cases of felony they must be indicted by a grand jury. Maybe
8 I am wrong. I have heard nothing different from anybody
9 I have talked to or the way I read the rules.
10 THE CHAIRMAN: Delegate Hargrove.
11 DELEGATE HARGROVE: In other words, you did not
12 determine that the State's Attorney has authority to dismiss
13 or not even take to the grand jury unless he so desires.
14 He can let it lay around for years, in fact, if he wants to.
15 DELEGATE KIEFER: I don't know. I am talking
16 about the grand jury system. You are getting into an area
17 I know nothing about, sir.
18 THE CHAIRMAN: Delegate Hargrove.
19 DELEGATE HARGROVE: One other question. Within
20 the last year, has your committee determined how many
21 investigations, say in Baltimore City again, the grand jury

1 has made during the year? I don't mean trips, I mean
2 actual investigations it has made of any matter.
3 DELEGATE KIEFER: I don't understand your question.
4 I said to you first, and I will say to you again that we
5 did not check statistics on this. We were concerned with
6 personal rights, protecting an individual in a criminal
7 matter. We talked to people,including Judge Moylan, and
8 based upon the various findings that we made we recommended
9 this be continued in the Constitution. We didn't try to
10 support it with statistical information as to how it was
11 used. It was our understanding that it has to be used
12 universally in the State of Maryland in all cases involving
13 felony.
14 Now, whether it is used by someone not going to
15 the grand jury, or whatever, we didn't get into; I just
16 don't know.
17 THE CHAIRMAN: Are there any other questions of
18 the Committee Chairman? The Chair hears none.
19 Delegate Kiefer, we will move to consideration
20 of section 13.
21 DELEGATE KIEFER: Section 13 --

1 THE CHAIRMAN: Just a second. Delegate Bothe.

2 DELEGATE BOTHE: I would like to explain an answer

3 if I may, because the question was asked both of State's

4 Attorney Moylan and of Mr. Welch, who is President of the

5 Grand Jurors Association, what number of indictments were

6 denied by the grand juries, and both answered that it was

7 apparently a rare occurrence for the grand jury to refuse

8 to return endictments requested by the State's Attorney,

9 although they gave us no exact statistics.

10 THE CHAIRMAN: Did you say a relatively rare

11 occurrence?

12 DELEGATE BOTHE: Rare.

13 THE CHAIRMAN: Very well. Section 13.

14 DELEGATE KIEFER: Section 13 reads as follows,

15 and this was adopted by this Committee, 88 in favor, 17

16 against, 37 not voting. This is an exact duplicate of the

17 present Constitution: "No person shall be imprisoned for

18 debt. A valid decree of a court of competent jurisdiction

19 or agreement approved by decree of such court for support

20 of a wife or dependent children, or for support of an

21 illegitimate child or children, or for alimony, shall not

1 constitute a debt within the meaning of this section."

2 Now,ladies and gentlemen, when this Recommendation

3 No. 2 was originally reported to this Committee, the work

4 was divided among three or four people, and because of

5 some mix-up this section was not properly or thoroughly

6 gone into from the point of view of apparently some

7 individuals here, though apparently it was gone into enough

8 so that it was overwhelmingly accepted.

9 Let me explain to you what the situation is from

10 a legal point of view in this connection.

11 First, until the Constitution of 1867 or 1854,

12 there was no prohibition against imprisonment for debt, and

13 there was imprisonment for debt in the State of Maryland.

14 After this provision was applied or put into the

15 Constitution, it simply read, "No person shall be imprisoned

16 for debt."

17 Now, as many of you lawyers know,or all of you

18 know,of course, many of our divorce proceedings are handled

19 by a part of the proceedings being an agreement or arrange-

20 ment between the husband and wife, a written agreement

21 with respect to alimony, custory of children, support of

1 children, and so forth. This agreement is incorporated
2 into the decree, and is enforceable by the courts.
3 Now,there were early decisions which held that
4 an agreement between husband and wife and incorporated
5 in a divorce proceeding by decree, where it involved this
6 agreement and it was not carried out by the husband, a
7 court could not hold that person in contempt and imprison
8 him because it was held by the Court of Appeals to be a
9 debt and not a duty.
10 Now, remember, if a wife in open court is awarded
11 alimony by the judge and the husband refuses to pay it at
12 a later time, this is a duty and not a debt, and the man
13 can be imprisoned for contempt of court. In these other
14 cases, which are a considerable part of the practice of
15 domestic relations, they could not.
16 To meet this situation, the Legislature recommended
17 and the State of Maryland adopted back in 1952 additional
18 language which sayd, "A valid decree of a court of competent
19 jurisdiction or agreement approved by decree of such court
20 for support of a wife or depedent children shall not
21 constitute a debt within the meaning of this section."

1 Subsequent to that time, another situation
2 arose. For many years there has been in this State a
3 bastardy statute, Article XII, which provides a requirement
4 that a father must support an illegitimate child, and
5 failure to do so is a criminal matter and can be punished
6 by imprisonment. This has been upheld as a perfectly valid
7 and proper exercise of police power.
8 However, six or eight years ago an effort was
9 made to modernize this aspect of our domestic law by
10 eliminating the whole article and changing this to an equity
11 proceeding.
12 An opinion of the Attorney General indicated that
13 if this were made a civil matter rather than a criminal
14 matter, a father of an illegitimate child could not be
15 imprisoned because it would be considered a debt. The
16 reason for that is that in common law a father was not
17 required to support an illegitimate child. As a result of
18 the Attorney General's opinion, in an effort to modernize
19 the practice the General Assembly recommended another
20 amendment to the Constitution adding the language "or for
21 the support of an illegitimate child or children." That

1 was passed in 1962.

2 We now have a modernized statute, Article VI,
3 Section 66(a) through (p), or something or the sort,
4 which provides for this as a civil proceeding rather than
5 a criminal proceeding.

6 Now, we have again gone through this procedure
7 of researching this down. We have talked to domestic
8 relations experts, lawyers who are leading people in this
9 field. We have talked to professors at the University of
10 Maryland, and it seems to be the consensus of opinion, as
11 I reported at the last go-round here, that this section
12 ought to be retained if we want in the Constitution the
13 basic concept that no person shall be imprisoned for debt.
14 If you eliminate the whole business, then you don't change
15 the present practice, but you do open the situation to an
16 imprisonment for debt if the Legislature wants to so
17 provide.

18 It seems to have been the consensus, it was
19 clearly the consensus of the Committee on Personal Rights
20 that this should be retained, and seemed to be the over-
21 whelming desire of this Committee.

1 I hope I have made this point clear.

2 THE CHAIRMAN: Are there any questions of the

3 Committee Chairman? Delegate Churchill Murray.

4 DELEGATE E. C. MURRAY: Mr. Chairman, at the

5 appropriate time I would like to speak about these first

6 two items, but not necessarily in the form presented.

7 THE CHAIRMAN: You will have an opportunity.

8 Are there any questions of the Chairman? Dele-

9 gate Marion.

10 DELEGATE MARION: Delegate Kiefer, if the whole

11 section on imprisonment for debt were removed from the

12 Constitution, those things which are now exceptions to the

13 basic principle that no one can be imprisoned for debt

14 could still be carried out under the circumstances which

15 you outlined.

16 Could you tell me what other types of debt that

17 cannot now justify imprisonment could justify imprisonment

18 so long as we have in the Constitution the due process

19 clause and the clause prohibiting cruel and unusual

20 punishment?

21 DELEGATE KIEFER: No, sir, I could not. I could

1 say to you that it would be extremely doubtful as to
2 whether these agreements in these marital cases, except
3 those that involve minor children -- now, a court has
4 recently held in a case called Zouck v. Zouck that the duty
5 of a father to support his monor children is such that it
6 would not be a debt even though it is included in an agree-
7 ment. Other than that, I assume there would be grave
8 doubts, and I might say that that case was decided after the
9 amendment had been put in the Constitution, so it was sort
10 of moot in a sense.
11 I don't know the answer to that. It has been
12 the feeling of the other legal experts that we have talked
13 to that it is better to leave this in than to leave it out
14 or to leave it to the Legislature.
15 THE CHAIRMAN: Delegate Marion.
16 DELEGATE MARION: Do all other states have such
17 a provision, where these sorts of matters have been brought
18 up in the courts and tests made of how far this can extent
19 in view of the due process clause and other constitutional
20 protections?
21 DELEGATE KIEFER: It hasn't been a matter of due

1 process, Delegate Marion. It has been a matter of getting
2 around some basic Court of Appeals decisions.
3 The Court of Appeals could decide otherwise. --
4 I can't answer your question. I don't know what the
5 due process clause is going to say about this now, and
6 nobody else can.
7 THE CHAIRMAN: Delegate Marion.
8 DELEGATE MARION: As I understand your reference
9 to Court of Appeals decisions, you are talking about their
10 decisions with a prohibition in the Constitution, with the
11 language in the Constitution that a person shall not be
12 imprisoned for debt, and to allow these special situations
13 where we do wich to permit imprisonment for debt we have to
14 provide exceptions to that constitutional provision.
15 Are there states which have no language whatsoever
16 dealing with imprisonment for debt, where somebody has been
17 imprisoned on some other set of facts and that been
18 challenged in the courts?
19 DELEGATE KIEFER: My advisor, Ed Smith, reminds
20 me of a case I read the headnotes on. It was a case in
21 Vermont, where they have no prohibition against imprisonment

1 for debt, and still in the 50's where a man was a defendant
2 in a tort case he was imprisoned, and the courts held that
3 this was a proper carrying out of whatever the court's
4 admonition or judgment was and that it did not violate
5 due process. That is the only one I know of offhand.
6 THE CHAIRMAN: Delegate Marion? Delegate Grant.
7 DELEGATE GRANT: Chairman Kiefer, during the
8 discussion of this the last time we brought up Article XIII
9 of the Federal Constitution, the involuntary servitude, the
10 question of whether you could have any imprisonment clause
11 stand in view of that involuntary servitude under the 13th
12 Amendment, what were the Committee's findings?
13 DELEGATE KIEFER: We had a search made of that
14 and found that was not applicable, really.
15 THE CHAIRMAN: Delegate Pullen.
16 DELEGATE PULLEN: Mr. Chairman, if you will
17 permit a non-lawyer to come in here, I am moved to ask a
18 question because it seemed to me this was a misuse of the
19 English language.
20 Your heading is "Imprisonment for Debt", but you
21 don't imprison the man for not supporting his wife or

1 or children, or alimony, and so on, because of a debt -- you
2 imprison him because he has been in contempt of court.
3 As a layman I have never quite understood how
4 the law would permit such a thing, but in the interest of
5 the English language, the whole thing is wrong. You are
6 imprisoning people who are not paying alimony, and so on,
7 for contempt of an order of the court, not because they
8 don't pay their debts.
9 DELEGATE KIEFER: How long have I known you, Dr.
10 Pullen?
11 DELEGATE PULLEN: Since you were a baby.
12 DELEGATE KIEFER: That is right, and here I have
13 explained this whole thing and haven't gotten it across
14 to you.
15 Let me do it once more, very easily.
16 THE CHAIRMAN: Delegate Pullen.
17 DELEGATE PULLEN: I understand what you say.
18 Don't take the time for that.
19 DELEGATE KIEFER: But you miss the point, because
20 you can imprison somebody for contempt of court when in open
21 court a judge, or a judge in any circumstances awards alimony

1 What I said was that in a great many cases the alimony
2 or support is arranged by a private agreement between
3 the parties and incorporated into the decision or decree,
4 and in that case the Court of Appeals has held that that
5 is a contract and therefore the failure to carry that
6 out is not the contempt of court kind of contempt that you
7 can be put in jail for, but this is a debt and therefore you
8 can't imprison for debt under this. This is why this was
9 amended.
10 THE CHAIRMAN: Delegate Pullen.
11 DELEGATE PULLEN: With the greatest respect for
12 you and all your family, and not to prolong the argument,
13 I maintain that this is specious reasoning and that it
14 does violence to the English language when you incorporate
15 two separate and distinct ideas into this particular thing.
16 My own opinion is -- I don't know whether you
17 want it or not -- that people should not be imprisoned
18 for debt, and I would wipe out all of that stuff about
19 alimony and the other, because that is an indirect way of
20 punishing people for that purpose by legalistic arrangement.
21 DELEGATE KIEFER: I want to be sure you under-

1 stand one thing. Section 13 is not the language of this
2 Committee, it is the present language of Section 38 of
3 Article III of the Constitution.
4 THE CHAIRMAN: Delegate Pullen.
5 DELEGATE PULLEN: I am trying to help you out.
6 I just don't like this particular thing.
7 DELEGATE KIEFER: Okay.
8 THE CHAIRMAN: Are there any other questions
9 of the Committee Chairman? The Chair hears none.
10 Section 10 was deleted by Amendment 16. Does
11 anyone wish to take any further action with respect to
12 Amendment 16 or Section 10? Delegate Churchill Murray.
13 DELEGATE E. C. MURRAY: At the appropriate time,
14 I would like to talk on this, sir.
15 THE CHAIRMAN: Well, there ought to be some issue
16 about which you would talk. Do you wish to take any
17 action?
18 DELEGATE E. C. MURRAY: Yes, sir.
19 THE CHAIRMAN: What action?
20 DELEGATE E. C. MURRAY: If after talking about
21 it the delegates see fit to do so, I would like to

1 suggest reconsideration of it.

2 THE CHAIRMAN: You may move for reconsideration

3 now, if you wish, and then you may --

4 DELEGATE E. C. MURRAY: Then I so move.

5 THE CHAIRMAN: The motion is to reconsider the

6 vote by which Amendment 16, deleting Section 10, was

7 adopted. Is there a second?

8 DELEGATE WILLONER: I second it.

9 THE CHAIRMAN: The motion having been seconded,

10 the Chair recognizes Delegate Murray to speak to the

11 motion.

12 DELEGATE E. C. MURRAY: Mr.Chairman, ladies

13 and gentlemen, in view of your kindness to me a few days

14 ago in permitting me to speak beyond my time, it would be c

15 cruel and unusual punishment to subject you to this again,

16 and did it concern me alone I would not do so. I think it

17 concerns the three million people in Anne Arundel County,

18 and I ask you to literally reconsider the matter. I ask

19 you to back off from it and look at it from another angle.

20 The amendment by which this was enacted had a long

21 stream of proponents who were really overordinate, but I ask

1 you to look at it from the standpoint of not only the
2 layman but the accused, Maryland as a whole, the Maryland
3 who inherited it from the English and had it I think since
4 1598.
5 Since then I have had the advantage of reading
6 an address that Judge Henderson delivered several years
7 ago, and I was very much impressed by the legal approach
8 to it, but here I think you have something more than a
9 strictly legal approach. Here you have, whether it be
10 a legal leverage or not, an opportunity for a criminal
11 juror to judge his fellow man as he would be judged, to
12 judge his fellow man not only upon the facts but the law
13 as it is viewed by laymen at the time of the crime, not as
14 it was viewed when the law was enacted thirty or forty
15 years ago, but as it is viewed in the community where the
16 alleged crime was committed, and the time at which it was
17 enacted.
18 I ask that you reopen the matter and pass upon
19 it on that basis.
20 THE CHAIRMAN: Delegate Kiefer.
21 DELEGATE KIEFER: Mr. Chairman, Delegate Willoner

1 was the person who explained this, so I will defer to
2 him.
3 THE CHAIRMAN: Delegate Willoner.
4 DELEGATE WILLONER: Mr. Chairman, when we debated
5 this the other day, I raised several questions that were
6 never answered to my satisfaction by those proponents who
7 wished to remove this section from the present Constitution.
8 I might say, as I said then, I did not come down
9 here to keep this provision in because I thought it was
10 archaic. After a little research I determined it had a
11 great historical background as well as a reason for
12 existence in the Maryland Constitution.
13 I raised two questions, and one was raised by
14 Judge Dorsey. I frankly just didn't believe it, and that
15 was this question of whether or not a judge could direct
16 a verdict of guilty. It just seemed so impossible to me
17 to be beyond belief.
18 As a result of his comments, wherein he said in
19 Federal court in a case he had tried they did in fact
20 direct a verdict, I went to the law books to determine
21 whether or not this was true, and much to my surprise I

1 found that it was true, albeit in a minority of cases, and
2 very old cases.
3 The Federal rule in this case is that the judge
4 cannot direct a verdict of guilty. The rationale is not
5 based, however, on constitutional right to trial by jury
6 but is based on the logic that the judge cannot do
7 indirectly what he can't do directly -- that is, the judge
8 could not direct the verdict of N.O.V., that is a verdict
9 notwithstanding the verdict of the jury, of acquittal,
10 therefore he could not direct a verdict of guilty before-
11 hand. That is the logic in Sharp and Hanson v. United States.
12 That particular case is still the law, and it
13 was decided by Justice Holmes in an opinion in Horning v.
14 D.C. in 1920, and that is the last statement the Supreme
15 Court apparently has had on the issue.
16 The most shocking thing I found in this research
17 was not so much that the judge can direct the verdict, but
18 that the judge can blackjack a jury into a decision. This
19 is what really bothered me, and in the Horning case, this is
20 Justice Holmes' opinion, the trial judge told the jury he
21 was not permitted to direct a verdict of guilty but he would

1 do so if it was permissible.

2 There were some cases I ran across where it was

3 held permissible to tell the jury that it is your duty to

4 bring in a verdict of guilty.

5 Now, Maryland, in an annotation, 72 AR -- Maryland

6 and Indiana are cited as the strong states for prohibiting

7 judges from blackjacking verdicts, and it is apparent why,

8 because we have the providion of the trier of the law and the

9 facts.

10 THE CHAIRMAN: You have one minute.

11 DELEGATE WILLONER: The other aspect which was

12 never answered, and now we are satisfied that the

13 inconsistent verdicts -- that is, in the felony murder case

14 you could not get an instruction on anything other than

15 first degree murder in a felony murder case, and therefore

16 a practice has grown up in Maryland to be prohibited.

17 I might say in an interesting case, U.S. v.

18 Anthony, where Susan B. Anthony voted, the judge directed

19 the verdict of guilty and fully discussed this problem.

20 I do think the blackjack verdict is something

21 that this body will have to decide whether it wants and

1 whether it wants to abolish a practice in Maryland that
2 is to allow the juries to determine the degree of the
3 offense within a felony murder situation, or in the lesser
4 offenses of that nature. I think this body should know
5 this before they vote on it, and I would ask that they
6 reconsider it and then revote on it so that we have a better
7 history than we had before.
8 THE CHAIRMAN: Does any other delegate desire to
9 speak in opposition to the motion? Delegate Henderson.
10 DELEGATE HENDERSON: Mr. Chairman and fellow
11 delegates, we voted the other day to eliminate this section
12 from the Constitution, and I don't want to repeat the
13 arguments that I made at that time or take up your time
14 with it, but the delay and the carryover was for further
15 investigation.
16 Now, the further investigation, it seems to
17 me -- and I have read these memorandums prepared by Mr.
18 Willoner and others -- it seems to me to be perfectly clear
19 that a trial judge cannot direct a verdict. There are
20 cases in the Supreme Court holding that. There is a case
21 in the Fourth Circuit which holds that, the Fourth Circuit

1 being the one in which we are located here, which was
2 presided over by Judge Winter, now our Maryland judge,
3 Judge Sobeloff, still a member of that court and chief
4 judge until quite recently.
5 Now, as for the so-called blackjack verdict,
6 where the judge forces the jury to act, I might call your
7 attention to the fact that under the procedure, the rules
8 and the law as changed and modified by constitutional
9 amendment, indeed, to allow the consideration of the case
10 on its merits by the court, everything that the trial
11 judge does now is fully reviewable and would be as fully
12 reviewable on appeal without this as with it. The court
13 is mandatorily required to instruct that everything he does
14 or fails to do is open to review on appeal, so that whether
15 we keep this antique thorn or whether we remove it, the
16 effect would be precisely the same as far as the rights of
17 the accused are concerned on appeal.
18 The only difference is this, that by appealing
19 this thorn we would allow the judge to give an instruction
20 on the law, and we would take away from the jury the
21 so-called right to disregard it,either for or against, which

1 under the present law would permit or might permit the
2 jury to find a man guilty of a non-existent crime.
3 Now, it is for reasons like this, and also I
4 might add that Judge Sobeloff in a most recent opinion
5 which he considered mentioned the fact that he hoped
6 that this provision would be removed by this convention
7 giving the strong hint that if it did not on the next go-round
8 he would declare the whole thing unconstitutional. That
9 is the situation we find ourselves in.
10 I most earnestly ask you to remove what Judge
11 Dennis called the antique thorn from our sides.
12 THE CHAIRMAN: Does any delegate desire to speak
13 in favor of the motion to reconsider? Delegate Dorsey.
14 DELEGATE DORSEY: Mr. President, I have the highest
15 regard for Judge Henderson. I think he was one of our
16 great appellate court judges, but he has not had the trial
17 experience of other judges in this court. He has viewed this
18 section from an ivory tower in the appellate court.
19 I would like to call the role of the judges in
20 this convention who voted the other day to retain this
21 section in the Constitution of Maryland. Judge Ferdinand

1 Sybert, former judge of the Court of Appeals, was for
2 twelve years State's Attorney of Howard County. He sat
3 not only on the side of the prosecution but in later years
4 as defense counsel, and Judge Sybert voted to retain this
5 section in the Constitution.
6 We have Judge Godfrey Child of Worcester County
7 who was State's Attorney of Worcester County, and also
8 acted many times as a defense lawyer, who voted to retain
9 this in the Constitution.
10 We have Judge Marvin Anderson, a former trial
11 judge of Anne Arundel County who was for years State's
12 Attorney and also acted many times as defense attorney,
13 who voted to retain this in the Constitution, and Judge
14 Adkins and myself also voted to.
15 I say this section has been in the Constitution
16 of Maryland for over a hundred years. It is engraved
17 in the administration of criminal justice in this State,
18 and although many efforts have been made from time to time
19 to repeal it, I think it should remain as part of our
20 criminal code which has been very effective in the
21 administration of criminal justice in this state.

1 THE CHAIRMAN: Does any other delegate desire to
2 speak in opposition? Delegate Sherbow.
3 DELEGATE SHERBOW: Mr. Chairman, ladies and
4 gentlemen, I ask you to vote in opposition to the
5 reconsideration motion. I hope it does not pass. If it
6 does, I hope you will vote against the proposal and vote
7 for the amendment to take this out of the Constitution.
8 I would like to address myself, without any
9 emotion, to the actual situation as it truly exists in the
10 trial of criminal cases. I have never sat as State's
11 Attorney, I have never prosecuted in a criminal case, but
12 I have sat on the defendant's side of the trial table and
13 I have sat as the judge, and I think I have tried more than
14 my fair share of criminal cases both before a jury and
15 where they sat without a jury.
16 It is literally absurd that in a civil case
17 involving just money or property when the judge speaks
18 to the jury what he tells them the law is they are
19 required to follow, but then when you get into the field of
20 the criminal law the judge must say to the jury, after
21 he gives them complicated instructions dealing with the

1 details of criminal cases and criminal law, he then must
2 finish up by saying, "You do not have to listen or pay
3 attention to what I have said," and then follows in the
4 arguments in the trials before the jury what is truly a
5 travesty. A lawyer will get up and in arguing the case to
6 the jury quote to the jury of twelve lay people a case that
7 was decided in Texas, and he will read part of the law
8 out of that Texas case, then will go on and read a case
9 that was decided in Arizona and read the law from that
10 case, and this will go on, and the jury is supposed to
11 understand the meaning of the law applicable to this case.
12 Now, we have moved far, far away in the last
13 15 or 20 years in the direction of protection of defendants.
14 I am glad. The pendulum had been over on the other
15 side, but somewhere in between is that great mass of
16 people who are represented by the American people, and
17 they have their rights also.
18 The defendant is entitled to a fair trial,
19 and we will see to it that in all of our courts he
20 obtains that fair trial, but this is not the kind of
21 trial that one should be subjected to, whether you are for

1 the state or for the defendant, where they will read law
2 cases to a jury. Not even law students are prepared
3 at the end of the first lecture to understand the full
4 meaning of the particular area of criminal law, but a
5 jury of twelve people are supposed to understand this.
6 How much better it is that we follow what the
7 other 48 states are doing and in our handling of criminal
8 cases we march in progress with the times and take this
9 thorn out -- because, truly, it is going to be held
10 unconstitutional because it is not good,it is not good for
11 the defendant, it is not good for the state, it is not
12 good for justice.
13 THE CHAIRMAN: Does any other delegate desire
14 to speak in favor of the motion for reconsideration?
15 Delegate Weidemeyer.
16 DELEGATE WEIDEMEYER: Mr. President and members
17 of the Committee, I suppose that there is some reason for
18 difference of opinion between Delegate Henderson and
19 myself. For 31 years I have had the defense of clients.
20 I wasn't representing the state. Had I been representing
21 the state, I could easily talk about the ease and facility

1 of taking appeal to correct the lower court's error,
2 because the state can well afford appeal.
3 A lot of clients I have had to represent in
4 31 years were not always able to go to the court of
5 appeals because it is costly in writing the brief, it
6 takes up extra attorneys' time, and somebody has to pay
7 for it or else the lawyer can't stay in practice.
8 I imagine that is one thing, but being on the
9 defense side on many occasions where I have thought I had
10 thoroughly prepared the law, where I knew the law from
11 one end to the other, I have seen the judge sitting up
12 there with the gavel of authority contending that I was
13 wrong when I knew that he was wrong. You get in a battle
14 like that before the jury who are to decide it, and what
15 alternative do you have? Go to the court of appeals
16 when your client can't pay for it, as Delegate Henderson
17 suggests, and get them to decide? No, you have this last
18 recourse, and at least I felt a little safe repose that no
19 matter how the judge had conducted himself all day long
20 that in the safety of this constitutional amendment which
21 some would now like to strike I had that last repose to

1 give the jury a chance to free an innocent man.

2 I would say that this motion to reconsider should

3 be carefully considered and it should be reconsidered and

4 you should vote to keep it in the constitution.

5 THE CHAIRMAN: Delegate Macdonald.

6 DELEGATE MACDONALD: Mr. Chairman, fellow

7 delegates, I think that this rule that we have had for

8 over 100 years has done a lot of harm in the State of

9 Maryland in the field of criminal law. We do not have

10 a good body of case law in the field of criminal law in

11 this state, and we do not have a sufficient body of case

12 law for the very reason we are talking about, because

13 the jury has been the judge of the law and fact.

14 The development of the criminal law in this

15 state has been retarded, it has been dwarfed because of

16 this archaic and outmoded rule.

17 In my opinion, the defendants that you are

18 talking about, the people you are trying to protect, they

19 have been hurt and they have been harmed because we do not

20 have a good body of case law.

21 Chief Judge Prescott, since we are quoting

1 judges, has termed this rule that we have had for over
2 100 years archaic, outmoded, and atrocious, and it is about
3 time we got rid of it.
4 THE CHAIRMAN: Does any other delegate desire
5 to spaek in favor of the motion?
6 Delegate Bothe.
7 DELEGATE BOTHE: Mr. Chairman, fellow delegates,
8 I rise with great reluctance to speak in favor of this
9 motion. I was one of the proponents of the Motion No. 16
10 before the House a few days ago. I was one of the
11 minority of three on the Personal Rights Committee. I
12 was in attendance at the State Bar Convention in 1956
13 when I voted to delete this provision from the constitution.
14 I was in law school in 1950 when the subject was before
15 the voters and a constitutional amendment was passed to
16 modify the effect of the jurors being judges of the law of
17 this state.
18 It is almost with shame that I arise today
19 because the thoughts which I had developed have resulted
20 from a lot of soul-searching and book-searching over the
21 past two days.

1 As a result of looking at the case law, looking
2 at the results of what would happen if we changed this
3 constitutional provision, I can't help but conclude that
4 the administration of justice in Maryland might be seriously
5 haremd and that the continuance of this provision, albeit
6 we may be the only state retaining it, is in the best
7 interest of justice in this state.
8 I say this because it is apparent that if we change
9 by constitutional deletion the provisions contained in
10 Article 15, Section 5 of the present constitution, we are
11 opening a Pandora's box of which we know not.
12 I wonder why so many judges, several of them
13 on the bench today, have hesitation to take this act,
14 and after looking at the cases I can understand why --
15 because I think they would have nearly unrestrained power
16 to take away from a defendant his right to a jury trial.
17 Now, Judge Henderson has spoken to the right of
18 appeal and Delegate Weidemeyer has spoken to the fact that
19 it would be very expensive in any event for a defendant
20 to take his problem to an appellate court.
21 I will speak to a third point in that regard,

1 because when and if the case reaches the appellate court
2 there is apparently no relief for this defendant against
3 whom the judge has directed a verdict. While the majority
4 of courts hold you can't direct a verdict it is still
5 possible, and the appellate courts approve it, for a judge
6 to command that a jury return a verdict.
7 I would like to read from the Horning case that
8 Delegate Weidemeyer cited, because this is the Supreme
9 Court's most recent word on what a judge has power to do,
10 and it is an interesting decision because Justice Holmes --
11 THE CHAIRMAN: Your time has expired.
12 DELEGATE BOTHE: May I read one paragraph,
13 because I want the Delegates to know what the Supreme
14 Court says is an appropriate direction to a jury?
15 THE CHAIRMAN: Proceed.
16 DELEGATE BOTHE: That judge said, and the
17 Supreme Court said it was all right, "In conclusion, I
18 will say to you" -- that is the members of the jury --
19 "that failure by you to bring in a verdict in this case
20 can arise only from a flagrant disregard of the evidence
21 and the law as I have given it to you and a violation

1 of your obligation as jurors. Of course, gentlemen of
2 the jury, I can't tell you in so many words to find the
3 defendant guilty, but what I say amounts to that."
4 THE CHAIRMAN: Delegate Armor.
5 DELEGATE ARMOR: It has been mentioned several
6 times here that there are 80-odd attorneys in this
7 group. I want to present to you the view of an odd
8 businessman.
9 Now, since I have been down here I have had three
10 jury calls. I do not object to serving on the jury,
11 but what happens when I do appear? Some of you attorneys
12 challange me because I have had formal education, because
13 I am a businessman.
14 I think, from my point of view, what some of
15 you attorneys are doing is getting a jury of lower
16 intelligence.
17 Now, I submit to you that these juries are
18 not able to judge the law. Let them judge the facts.
19 Therefore, I am against reopening this issue.
20 THE CHAIRMAN: Delegate Kosakowski.
21 DELEGATE KOSAKOWSKI: Mr. Chairman, it would

1 be repetitious on my part if I mentioned the arguments
2 for the proponents of this section. I will urge the
3 assembly here, this convention, to vote for reconsideration.
4 I served for eight years on the judiciary
5 committee in the legislature, and I speak as a layman.
6 I have seen lawyers argue before. They are split over
7 this issue.
8 We are here to put into the constitution a
9 section for personal rights, the rights of all people,
10 and I know it sounds difficult for a lawyer to think that
11 another lawyer wouldn't understand the law -- it sounds odd
12 and strange, but in many instances there are non-lawyers,
13 well educated people with experience in law offices who
14 later serve on these juries, and I think they would be
15 able to determine the law.
16 Quite a bit of the State Bar Association
17 appeared at our committee and I, as a layman in my naive
18 way hearing the arguments pro and con by the lawyers who
19 couldn't decide themselves, I as that layman said to this
20 learned lawyer, "Sir, if your life was at stake, would you
21 want to be judged by the system that you are proposing

1 now, by your peers of all lawyers who really know the
2 law, or would you rather put your life at stake under the
3 present system?"
4 I never got an answer, and I say to this body
5 vote to reconsider and give the other 28 members who did
6 not have an opportunity to vote either way on this issue to
7 vote to reconsider.
8 Thank you.
9 THE CHAIRMAN: Delegate Carson.
10 DELEGATE CARSON: Mr. Chairman, ladies and
11 gentlemen, I will be very brief.
12 It seems to me that the real reason for taking
13 up this antiquated provision is because it permits
14 uneven and unequal justice, something that we can't permit.
15 It permits one jury to find that "X" is the law and
16 therefore that a defendant is guilty, but it permits at
17 the same time another jury to find that "Y" is the law
18 and therefore another person who committed exactly the
19 same crime, under exactly the same circumstances, may or
20 may not be guilty.
21 I suggest this is a horrendous state of affairs,

1 and it does not cut against the state and just in favor
2 of the defendant -- it cuts against the defendant also.
3 I know, as I said the other day, of at least two cases
4 in which I am convinced that men served life sentences
5 where they would not have otherwise because of this
6 provision.
7 I urge you to vote against reconsideration,
8 but if you do reconsider, against changing what we have
9 already done.
10 THE CHAIRMAN: Is there any other discussion?
11 Delegate Bamberger.
12 DELEGATE BAMBERGER: Mr. Chairman, I would like
13 to ask the Chairman of the Committee a question.
14 THE CHAIRMAN: Is there any discussion first?
15 Does anybody want to speak on the issue?
16 Delegate Willoner.
17 DELEGATE WILLONER: I would like to correct
18 some misinformation that has been placed on the floor.
19 When we were discussing this the other day we heard
20 that the rule commission decided this provision should no
21 longer be in the constitution, and we called Judge Brune.

1 and interestingly enough these three problems we have
2 discussed here today were never discussed and he was not
3 even aware of this problem.
4 I am absolutely convinced that most of the people
5 who have suggested this be taken out have not actually
6 made a study of how it would affect the criminal law in
7 this state.
8 Secondly, you have heard a lot of talk about
9 how horrible it is for juries to bring on uneven justice
10 and all. As a practical matter, in one case out of a
11 thousand does a jury disregard the judge's instructions.
12 That is just a problem we are confronted with, because
13 they look to the judge for instructions and they listen
14 to him, and lawyers are not effective in arguing the law
15 to the jury. Even if they are, it is only where they
16 are able to express the law in a better way than the judge
17 is, and if a jury can't understand the instructions of
18 a judge, surely they can't understand the argument of
19 the lawyer, and it seems to me that the principle would
20 be the same.
21 Judge Sherbow says that they argue a case in

1 Texas and a case in Arizona. As a practical matter,
2 once again, if it is improper law, the court has the power
3 to strike any misargument of the law upon objection.
4 Delegate Carson talks about these terrible
5 life sentences that two people he knows are serving. The
6 judge has the power, where he feels a miscarriage of
7 justice has occurred -- and they have done it, Judge Diggs
8 has told me he has done it where he feels the jury has
9 gone wrong -- to grant a new trial.
10 If these people are serving life sentences it is
11 not the jury's fault, it is the judge's fault for not
12 granting a new trial. These reasons are not sound, and
13 a study has not been done to give us sufficient evidence
14 to take this out of the law today.
15 THE CHAIRMAN: Delegate Bamberger, Delegate
16 Kiefer had yielded to Delegate Willoner to respond to
17 questions.
18 Do you want to ask a question of Delegate
19 Willoner or Delegate Kiefer?
20 DELEGATE BAMBERGER: Delegate Willoner.
21 THE CHAIRMAN: Delegate Willoner, will you

1 take the floor to yield to a question?

2 DELEGATE WILLONER: Yes.

3 THE CHAIRMAN: Delegate Bamberger.

4 DELEGATE BAMBERGER: Since the principal

5 argument to retain this in the constitution goes to this

6 problem of a judge having the right to direct a verdict

7 of guilty, and since there does not seem to be any argument

8 in favor of the jury as a matter of fact judging the

9 law, did the Committee consider the abolition of this

10 provision and the statement in the constitution of a

11 prohibition against the directed verdict of guilty?

12 THE CHAIRMAN: Delegate Willoner.

13 DELEGATE WILLONER: May I say personally that

14 is not the only objection,and frankly the Committee did

15 not discuss it in this much detail. As a matter of

16 fact, it was only after some study that we determined

17 by removal there might be a problem. The three problems

18 are the directed verdict, and I personally don't feel

19 the courts will direct a verdict.

20 What bothers me more is the situation Delegate

21 Bothe points out,the so-called blackjack verdict. Of course,

1 we had no discussion today about the felony murder decision.
2 Judge Bruno's answer was we are going to get rid of the
3 felony murder rule. If we are to change the criminal
4 law in this state, and I haven't heard anybody saying it
5 is a horrible way we try cases in this state, we ought to
6 do it with study and know what we are doing and make sure
7 these problems are covered.
8 If we just remove this, we will leave the door
9 wide open for the judges to do whatever they decide to
10 do in this area with no restriction on them.
11 THE CHAIRMAN: Delegate Singer.
12 DELEGATE SINGER: I have a question for Delegate
13 Henderson, if he will yield.
14 THE CHAIRMAN: Delegate Henderson, would you
15 take the floor to yield to a question?
16 DELEGATE HENDERSON: I will.
17 THE CHAIRMAN: Delegate Singer.
18 DELEGATE SINGER: What problems have been
19 encountered in states which do not have such a constituional
20 prohibition in the administration of criminal trials, if
21 you know?

1 THE CHAIRMAN: Delegate Henderson.

2 DELEGATE HENDERSON: I don't quite understand
3 your question. They have developed a body of criminal
4 law there which we have not, until quite recently -- we
5 didn't review cases on the merits in this state.

6 THE CHAIRMAN: I think, Delegate Henderson,
7 Delegate Singer's question is directed to the question
8 if you know whether the other 48 states which do not have
9 this prohibition have any problems, for instance, with
10 respect to the trial court directing a verdict of guilty.

11 Is that what you are driving at?

12 DELEGATE SINGER: Yes.

13 DELEGATE HENDERSON: I don't believe they do.
14 One memorandum which I read here indicated -- the research
15 I believe was done by Mr. Adkins, our research assistant
16 in the judicial branch, and he cited the overwhelming
17 weight of authority is that a judge can't direct a verdict
18 in a criminal case. He cites, as I mentioned, the
19 Supreme Court case and a case in the Fourth Circuit
20 which is our own circuit here, federal circuit, and in both
21 of those it was held explicitly that you could not direct

1 a verdict.

2 In the area of the so-called blackjack verdict,

3 in all cases the criminal appeal, on appeal if such a thing

4 existed the trial court can set it aside.

5 This earlier case decided by the Supreme

6 Court -- I believe Justice Holmes was on the Supreme

7 Court at that time long before they developed all this

8 14th Amendment law dealing with criminal procedures in

9 which the Supreme Court has said over and over again

10 that not only is the criminal entitled to a free appeal,

11 a free record and a free counsel, but he is also

12 entitled to a full review; in other words, the right

13 to appeal and the right to full review on appeal is now a

14 right guaranteed by the Federal Constitution, so I don't

15 think there is any problem at all, really, that I can see.

16 THE CHAIRMAN: Are you ready for the question?

17 Delegate Stern.

18 DELEGATE STERN: I would like to speak in favor

19 of reconsideration briefly, and I would like to speak

20 to those lay persons of the Committee.

21 You have heard and seen what you would if you

1 were on a jury. You have heard two sides of what the law
2 is from Judge Henderson and Delegate Willoner. The
3 same decision that you make here is what a jury must make,
4 hearing the law and then deciding for yourself what the
5 law should be.
6 Suppose the judge was Judge Henderson -- the
7 case would go one way. Suppose the judge was Delegate
8 Willoner -- the case would go the other way.
9 Defense attorneys are given this opportunity
10 to explain further the law and the brief instruction
11 the judge gives is usually spoken to the jury in a
12 monotone along with many things, no notes are taken by
13 the jurors and it is very difficult for them to remember.
14 By bringing in case law by the attorneys to the jurors
15 they are able to decide. There is no problem with the
16 lay person deciding what the law is -- we have done it here
17 for three months.
18 THE CHAIRMAN: Are you ready for the question?
19 The Clerk will ring the quorum bell.
20 The question arises on the motion to reconsider
21 the vote by which Amendment 16 was adopted. This is only

1 the vote on reconsideration -- it is not the vote on
2 Amendment 16. If the motion for reconsideration carries,
3 the Chair will submit to you separately Amendment 16.
4 The question now arises on the motion to re-
5 consider the vote by which Amendment 16 was adopted.
6 A vote Aye is a vote in favor of reconsideration, a vote
7 No a vote against.
8 Cast your votes.
9 (Whereupon, a vote was taken.)
10 THE CHAIRMAN: Has every delegate voted? Does
11 any delegate desire to change his vote?
12 The Clerk will record the vote.
13 There being 54 votes in the affirmative and 56
14 in the negative, the motion to reconsider is lost.
15 The question now arises with respect to
16 Section 11. Section 11 was amended by Amendment 18.
17 Amendment 18, in case you do not have it, substitutes
18 for Section 11, on page 3, the following language:
19 "No person shall be held to answer for a
20 felony unless on indictment of a grand jury except in
21 cases arising in the militia while in actual service."

1 Does anyone desire to take any action with
2 respect to Amendment 18?
3 Delegate Bothe?
4 DELEGATE BOTHE: Mr. Chairman, I move re-
5 consideration of Amendment 18.
6 THE CHAIRMAN: Is there a second.
7 (Whereupon, the motion was seconded.)
8 THE CHAIRMAN: It has been moved that the vote
9 by which Amendment 18 was adopted be reconsidered. The
10 motion having been seconded by Delegate Willoner, the
11 Chair recognizes Delegate Bothe.
12 Delegate Bamberger?
13 DELEGATE BAMBERGER: A parliamentary inquiry.
14 THE CHAIRMAN: State the inquiry.
15 DELEGATE BAMBERGER: Would it be proper now
16 to reconsider the vote on Amendment No. 17, which was
17 the amendment that proposed to strike this section?
18 THE CHAIRMAN: I don't think it would be proper
19 to consider that without taking some action with respect
20 to Amendment 18.
21 Delegate Bothe.

1 DELEGATE BOTHE: In moving to reconsider, it is
2 my intention toward the end to move that the provisions
3 with regard to the grand jury be deleted. The one
4 suggested by Delegate Bamberger which would allow the
5 principal question --
6 THE CHAIRMAN: I suggest that I think you can
7 combine them.
8 Delegate James.
9 DELEGATE JAMES: Can't you offer an amendment
10 to strike out the section as amended?
11 THE CHAIRMAN: Just a second.
12 Delegate Bothe, I think you can, as the Chair
13 suggested, move to reconsider the vote by which Amendment
14 No. 18 was adopted and Amendment No. 17 was rejected.
15 The Chair would first submit the reconsideration of 18,
16 and if that carried then submit the question on 17.
17 DELEGATE BOTHE: Then I move as I have on 18,
18 which is the amendment by which the language suggested
19 by the Committee was changed to read that no person
20 shall be held to answer for a felony or other infamous
21 crime unless on indictment of a grand jury except in

1 cases arising in the militia while in actual service."
2 THE CHAIRMAN: That was the motion before.
3 You are not accepting the suggestion of the Chair?
4 DELEGATE BOTHE: Excuse me, I am reading the
5 wrong amendment. I move for reconsideration of Amendment
6 No. 17.
7 THE CHAIRMAN: You have to first move with
8 respect to 18. You can combine the two in one motion
9 if you desire to do so.
10 DELEGATE BOTHE: I move for reconsideration
11 of both Amendments 17 and 18.
12 THE CHAIRMAN: The motion is that the vote
13 by which Amendment 18 was adopted and Amendment 17
14 rejected be reconsidered. Is that your motion?
15 DELEGATE BOTHE: That is my motion.
16 THE CHAIRMAN: Is that seconded, Delegate
17 Willoner?
18 DELEGATE WILLONER: Yes.
19 THE CHAIRMAN: Delegate James.
20 DELEGATE JAMES: Doesn't it distort the issue
21 to combine these? Suppose a person desired -- and I

1 don't, incidentally -- suppose a person desires a clear-cut
2 vote on the question of whether the Section 11, as amended,
3 should remain as adopted.
4 THE CHAIRMAN: If so, you could vote against
5 the reconsideration of Amendment 18, that would end the
6 matter and leave it that way.
7 DELEGATE JAMES: But I understand the motion
8 is being combined.
9 THE CHAIRMAN: The motion is being combined.
10 The Chair stated it would submit each separately. The
11 first question submitted will be reconsideration of
12 Amendment 18. If that is not carried, that is the end
13 of the matter.
14 Delegate Bothe.
15 DELEGATE BOTHE: Mr. Chairman, fellow delegates,
16 we have never in this state had a recognition of grand jury
17 in the constitution. We have, however, under the Maryland
18 Rules of Procedure, Rule 708, a right of an accused to a
19 grand jury indictment in all felony cases and such remarks
20 as I will make do not go in derogation of that right.
21 I would assume that it will continue whether or

1 not the amendment to put the grand jury into the
2 constitution stays or goes.
3 I would suggest to you that the placing of the
4 right to indictment by a grand jury in the new Maryland
5 constitution is a backward step. The right to indictment
6 by grand jury dates back, as I understand it, to feudal
7 times, to days when both judges and juries were laymen
8 and peers, to the time when the grand jury not only
9 presented the case, not only decided that there was prima
10 facie evidence on which the accused should be brought to
11 trial, but actually tried the case itself.
12 Under our modern practices today, the grand
13 jury does not serve many of its traditional functions.
14 It is not an effective screening body between the accused
15 and the court, as was stated to us by witnesses and has
16 been seen by statistics which unfortunately I do not have
17 here, the practice has been for the grand jury to be nothing
18 more than a conduit between state's attorneys and the court.
19 It has been a source of delayed justice rather
20 than advanced justice. It has saved no one from the
21 glare of publicity or the embarrassment or expense of making

1 a defense. In most cases the accused is indicted and it is
2 not until the time of his trial that his final deliverance
3 is made, and even where the grand jury does not indict,
4 its actions or the ones which affect the accused are not such
5 as to protect his privacy or secrecy.
6 Every time you pick up the newspaper you will
7 see where some case was taken to the grand jury or where
8 investigation was made, and whether or not an indictment
9 was returned the privacy of the individual and the protection
10 against unjust accusation is there nevertheless.
11 There is a tendency away from the grand jury
12 system, and again I don't think this is any violent change
13 that should occur immediately upon the adoption of the
14 constitution, but if we embed in the new constitution
15 a system which in large part has outlived its usefulness --
16 THE CHAIRMAN: You have one-quarter minute,
17 Delegate Bothe.
18 DELEGATE BOTHE: We are going backward.
19 There is no protection for the accused which does not
20 presently exist under our laws which will not continue
21 to exist unabated if we forget or leave out this at best

1 superfluous provision.

2 I suggest that by reconsidering amendments 17

3 and 18 we leave that space blank in the new constitution.

4 THE CHAIRMAN: Does any delegate desire to

5 speak in opposition to the motion?

6 Delegate Sherbow?

7 DELEGATE SHERBOW: Mr. Chairman, ladies and

8 gentlemen, the grand jury system in Maryland is probably

9 one of the strongest bulwarks of protection for the

10 individual citizen that has ever been devised. If we

11 abandon it or take it out of our system, it means the

12 state's attorney may then proceed in the form of an

13 information.

14 You may or may not have any of the safeguards

15 which we have at the present time. But what is this glib,

16 easy statement, we don't have anything, it is a rubber

17 stamp, it doesn't do anything, everything is written in the

18 newspapers, nobody has protection?

19 I am going to read to you from a case in the

20 court of appeals of Maryland where there was a decision

21 based on these facts. A man felt that he had a right

1 to present to the state's attorney the fact that justice
2 did not prevail. The state's attorney paid him no heed.
3 The man went to the magistrate, tried to get the state's
4 attorney to act, but nothing occurred. He went to court
5 to make the state's attorney let him go before the grand
6 jury, and this is the case of Black against the State's
7 Attorney of Baltimore City in 184 Maryland.
8 The court of appeals said, and I am going to
9 read you some of the language, and in the light of all the
10 things that are happening that bespeak no protection
11 for people but only for the state or for the defendant,
12 I want you to listen, please.
13 "That other adequate remedy to which the
14 petition is entitled is that of personally presenting
15 his case to the grand jury of Baltimore City."
16 They went on to say that he had no right
17 to stop them on the street but he had a right to rap on
18 their door and ask to be heard. They gave him that
19 right, and in doing so they said, our predecessors,
20 speaking through Judge McSherry, said:
21 "However restricted the functions of grand

1 juries be elsewhere, we hold that in this state they have
2 plenary inquisitorial powers and they lawfully themselves
3 and upon their own motion originate charges against
4 offenders, though no preliminary proceedings have been had
5 before a magistrate, and though neither the court nor the
6 state's attorney has laid the matter before them. The
7 peace, the government and the dignify of the state, the
8 well-being of society and the security of the individual
9 demand that this ancient and important attribute of
10 a grand jury should not be narrowed or interfered with
11 when legitimately exerted."
12 THE CHAIRMAN: Your time has expired, Delegate
13 Sherbow.
14 DELEGATE SHERBOW: I hope that you will vote
15 against reconsideration of this matter.
16 THE CHAIRMAN: Does any other delegate desire
17 to speak in favor of the reconsideration?
18 Delegate Bamberger.
19 DELEGATE BAMBERGER: Delegate Sherbow makes
20 an eloquent argument that we should not abolish the
21 grand jury, but I submit that is not the issue presented

1 to us. We have a grand jury in Maryland. It functions
2 as Delegate Sherbow has said it functions, and not one word is
3 said about it in the present constitution.
4 The issue is whether there is something so
5 important about it and so sacred about the way in which
6 it now operates that it is necessary for us to insert it
7 in this new constitution.
8 I submit that it is not, and that no argument
9 has been made on this floor to buttress that statement.
10 I think Delegate Bennett has pointed out another
11 concern. Grand juries do not meet in every county at
12 all times. Grand juries, as I understand the practice
13 in the counties, are called when it is necessary for them
14 to attend to their business, and in between those times
15 they are not in session.
16 A man who is arrested and charged with a crime
17 is told that he has a right to an indictment by grand
18 jury. He may or may not be told that he has a right or
19 he has the privilege of waiving that right, and in many
20 instances will sit in jail for weeks or even months
21 until a grand jury is impaneled again to hear the evidence

1 against him and to present an indictment.

2 I suggest that this is a matter to be left

3 to the General Assembly as it has been since at least

4 the Constitution of 1867, and that no arguments have

5 been made to justify adding this to our present con-

6 stitution.

7 I urge you to vote for reconsideration and then

8 in favor of the amendment to strike this from the

9 constitution.

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1 THE CHAIRMAN: Any other delegate desire to
2 speak in opposition to the motion for reconsideration?
3 Apparently not.
4 Delegate Carson.
5 DELEGATE CARSON: Mr. Chairman, Ladies and Gen-
6 tlemen: The Fifth Amendment to the United States Consti-
7 tution says that it is the right of every citizen in this
8 country so far as Federal claims are concerned not to be
9 charged unless a grand jury presentment is returned.
10 Now, this is limited to capital or otherwise
11 infamous crimes. The amendment which was adopted the
12 other day limits the grand jury requirement to capital
13 crimes or felonies. These are serious crimes. They are
14 not petty misdemeanors and it is important to a person
15 and to his reputation not to have a charge brought against
16 him unless it has seriously been considered and I think
17 to have 23 men and women by majority vote decide whether
18 an indictment is to be returned is an important right of
19 the individual.
20 Furthermore, I do not think that the prosecu-
21 tors in this State want the right to be able themselves to

1 determine who shall be tried for felonies or capital crimes.
2 This is a very delicate and very serious thing, the charge
3 of a crime, and I think it would be very illadvised to
4 combine in the same office, in the same man the job of
5 deciding who shall be prosecuted and then the job of
6 actually prosecuting that person.
7 Now, I do not think this argument pertains with
8 regard to petty misdemeanors and exception is made here
9 for that. There is no question that a person charged with
10 crime may waive an indictment. This does not mean that he
11 is pleading guilty. This only means that he is saying, "I
12 will waive the right to have the grand jury consider this",
13 and then he is tried upon an Information so the fact that
14 you have the grand jury right does not mean that you lose a
15 speedy trial. It gives you an additional right. I think
16 it is a valuable right. I think it is a right which not
17 only the accused should have but a right which I think all
18 states attorneys would desire to have it in the Constitu-
19 tion for their own protection and for the protection of
20 society and I urge you to seriously consider its retention.
21 THE CHAIRMAN: Delegate Bennett.

1 DELEGATE BENNETT: Mr. Chairman, I rise, if I
2 may, please, to correct Delegate Carson so far as the
3 attitude of Federal judges are concerned. I think if a
4 poll were taken of the Federal judges, today you would find
5 that they are opposed to the grand jury's procedure as a
6 scar on governmental action, as a slowing up of the adminis-
7 tration of justice, as inducing and supporting judge
8 shopping, as plea bargaining, I think the overwhelming
9 majority of Federal judges are opposed to the retention of
10 the grand jury proceedings.
11 THE CHAIRMAN: Any other delegate desire to
12 speak against the motion?
13 Delegate Miller, do you desire to speak in
14 opposition?
15 DELEGATE B. MILLER: I have a question, Mr.
16 Chairman.
17 THE CHAIRMAN: To whom is the question directed?
18 DELEGATE B. MILLER: I don't know even to whom
19 my question is directed. Again, it is a layman's question
20 to the attorneys at this Convention. I am at a loss.
21 Are we discussing whether or not there should
be a grand jury system or whether or not we include it

1 in the Constitution? My question is if we don't include
2 it in the Constitution, does it disappear?
3 THE CHAIRMAN: Delegate Bamberger has taken
4 the position very flatly that it would not. Delegate
5 Sherbow has indicated -- I am not sure whether he does so
6 flatly -- that he would.
7 Delegate Sherbow.
8 DELEGATE SHERBOW: May I just add that in the
9 present Constitution there is a provision saying that the
10 accused under certain circumstances is entitled to an in-
11 dictment. You can't have an indictment without a grand
12 jury, therefore, it is in the present Constitution in that
13 form.
14 In our whole system in Maryland, we have the
15 grand jury system.
16 THE CHAIRMAN: Delegate Bamberger.
17 DELEGATE BAMBERGER: I don't have the words of
18 the present Constitution but my recollection of what they
19 say is that an accused is entitled to a copy of the indict-
20 ment against him. I think that means that if by law a
21 grand jury is provided and it indicts, the man is entitled

1 to a copy of it but, let me direct myself to Delegate
2 Miller's question and it is a good question. The present
3 Constitution says and the Constitution which we propose
4 will say that the accused are entitled to certain common
5 law rights, among those now is in certain instances the
6 right to indictment by a grand jury. If we strike out
7 this Section 11, that right will continue as it is now in
8 the State of Maryland until it is changed by the General
9 Assembly.
10 THE CHAIRMAN: Delegate Miller, so that there
11 will be no misunderstanding, the only two provisions re-
12 ferring to indictment in the present Constitution, I
13 believe, are Article 21 of the Declaration of Rights,
14 without reading the whole thing, provides that in all
15 criminal prosecutions, every man has a right to have a
16 copy of the indictment or charge in due time.
17 And Article 4, Section 13, which deals with
18 the assignment of judges primarily --
19 Delegate Bamberger.
20 DELEGATE BAMBERGER: No, that is 13-A.
21 THE CHAIRMAN: I am sorry.

1 13, which deals with the forms of certain docu-
2 ments, public commissions, grants and so forth, and writs
3 and process also contains this concluding clause: All in-
4 dictments shall conclude "against the peace, government
5 and dignity of the State", so far as the Chair is aware
6 there is no provision in the present Constitution which
7 says that an indictment in any case is necessary unless
8 you draw it by implication from those two provisions.
9 Any delegate desire to speak in opposition?
10 Delegate Willoner, do you desire to speak in
11 favor of the motion?
12 DELEGATE WILLONER: Yes, I do.
13 I think it would be useful to explain to this
14 body, at least to the layman, how this thing works. When
15 a crime is committed a defendant is charged by way of a
16 warrant by a police officer and this involves about 99 per-
17 cent of the cases. Then he is taken to a committee magis-
18 trate, it will be the district court in the future and the
19 district court determines whether or not there is probable
20 cause to hold him for the grand jury. So there is a hear-
21 ing at that point. The witnesses have to be at that

1 preliminary hearing. Often times that is continued and
2 the witnesses again have to come back. Then if there is
3 probable cause it is referred to the grand jury and there
4 is publicity, it is open to preliminary hearing. The
5 press is there, and then it goes to the grand jury. That
6 is secret, but the witnesses have to be there. Ordinarily
7 the practice in Prince Georges was to call the police
8 officer and he spends about five minutes on the case, he
9 runs through his report and the grand jury indicts.
10 Occasionally, the grand jury has indicted
11 people who they were told there was no case against and
12 they indicted him anyway. Recently a legislator was in-
13 dicted. The statute of limitations had run, but they
14 accused him anyway. The question we have today is a
15 question of flexibility. In the District of Columbia they
16 have a very high crime rate. One of the problems they
17 have is that the grand jury is backed up so far that they
18 will take lesser pleas to misdemeanors rather than proceed
19 through the grand jury proceeding. I would suggest that
20 the flexibility that is allowed in our present system, we
21 all have grand juries, every county runs them differently.

1 The rules require an indictment in felony cases, it is to
2 leave it the way it is and not include it in the Constitu-
3 tion.
4 What Judge Sherbow read, all that lovely language
5 applied to the grand jury as it exists today not as it
6 will exist under this provision.
7 I would suggest that you vote for reconsidera-
8 tion and I would suggest that you vote to leave this out
9 of the Constitution and allow the flexibility that we have
10 had for the last 200 to 250 years.
11 THE CHAIRMAN: The Clerk will ring the quorum
12 bell.
13 The question arises on the motion to reconsider
14 the vote by which Amendment No. 18 was adopted and Amend-
15 ment No. 17 was rejected.
16 If the motion to reconsider is carried, the
17 Chair will then submit to you again Amendment No. 17. If
18 Amendment No. 17 is adopted, that is an end to the matter.
19 If Amendment No. 17 is rejected, the Chair will then again
20 submit to you Amendment 18.
21 At the present time, the vote is solely on the

1 reconsideration of the vote by which Amendment 18 was
2 adopted, Amendment 17 rejected.
3 A vote Aye is a vote in favor of reconsideration.
4 It opens both amendments to you again. A vote No is a
5 vote against reconsideration and ends the matter.
6 Cast your votes.
7 Has every delegate voted?
8 Does any delegate desire to change his vote?
9 The Clerk will record the vote.
10 There being 46 votes in the affirmative and 63
11 in the negative, the motion to reconsider is lost.
12 Section 13 was deleted by Amendment 20. Does
13 anyone desire to take any further action with respect to
14 this amendment?
15 I am sorry, Amendment 20 was rejected. Section
16 13 is before you in the form in which it was submitted.
17 Does anyone desire to take any action with
18 respect to Section 13.
19 The Chair hears none.
20 The question now arises on the approval of Com-
21 mittee Recommendation R&P-2 with respect to Sections 10, 11

1 and 13 as amended.

2 Is there any discussion?

3 Are you ready for the question?

4 The Clerk will ring the quorum bell.

5 Delegate Macdonald.

6 DELEGATE MACDONALD: Mr. Chairman, could you

7 please describe to us what is the status of each of

8 these sections at present?

9 THE CHAIRMAN: In response to Delegate Macdonald's

10 question, Amendment 16 with respect to Section 10 was

11 adopted and reconsideration failed.

12 The amendment deleted all of Section 10 so Sec-

13 tion 10 is deleted.

14 With respect to Section 11, Amendment 17 which

15 deleted it failed, reconsideration failed.

16 Amendment 18 was adopted and reconsideration

17 failed, therefore, Section 11, as amended, reads, "No per-

18 son shall be held to answer for a felony unless on indict-

19 ment of the grand jury except in cases arising in the

20 militia while in actual service".

21 Amendment 20 with respect to Section 13 was

1 rejected. Section 13 therefore remains as printed in the
2 blue copy. To recapitulate, Section 10 is out, Section 11
3 is amended, Section 13 is unamended.
4 Are you ready for the question?
5 (Cries of Question.)
6 THE CHAIRMAN: The question arises on the approval
7 of Committee Recommendation R&P-2 with respect to Sections
8 10, 11 and 13 as amended. A vote Aye is a vote in favor
9 of approval of the Committee Recommendation with respect
10 to these sections as amended. A vote No is a vote against.
11 Cast your vote.
12 Has every delegate voted?
13 Does any delegate desire to change his vote?
14 The Clerk will record the vote.
15 There being 93 votes in the affirmative and 17
16 in the negative, the motion is carried and Committee
17 Recommendation R&P-2 with respect to Sections 10, 11 and
18 13 as amended is approved.
19 The next item for consideration by the Committee
20 of the Whole is Committee Recommendation No. GP-12. The
21 Chair recognizes Delegate Wheatley, Vice Chairman of the

1 Committee to present the recommendation of the committee.

2 DELEGATE WHEATLEY: Mr. Chairman, and Ladies

3 and Gentlemen of the Committee of the Whole: This Recom-

4 mendation GP-12, I am happy to report, was unanimously

5 adopted by the General Provisions Committee and should

6 present --

7 THE CHAIRMAN: For what purpose does Delegate

8 Kiefer rise?

9 DELEGATE KIEFER: Mr. Chairman, many of us over

10 here have never gotten the recommendations. We have gotten

11 the memorandum in support of it.

12 THE CHAIRMAN: Committee Recommendation GP-12

13 was submitted yesterday or the day before.

14 Pages, do you have some copies of Committee

15 Recommendation GP-12?

16 This was distributed yesterday.

17 Any delegates who do not have a copy of Commit-

18 tee Recommendation GP-12 please indicate.

19 Delegate Darby.

20 DELEGATE DARBY: Mr. Chairman, all the delegates

21 received a memo from Santa Claus. I would like to inquire

1 of the Chair if this memo will go into the Convention
2 records? I also would inquire from you if you would con-
3 duct an investigation to make certain that the authors'
4 name is also mentioned in the records and if you approve
5 of this memo.
6 THE CHAIRMAN: I have not read beyond the first
7 paragraph. I suspect the name of the author, but I am not
8 certain. (Laughter.)
9 THE CHAIRMAN: All delegates who do not have a
10 copy of GP-12, the pages will bring you a copy.
11 Delegate Kiefer.
12 DELEGATE KIEFER: Is there a blue sheet of paper?
13 We have gotten a white sheet several times but we have
14 never gotten a blue sheet over here.
15 THE CHAIRMAN: Delegates who do not have a blue
16 copy, please indicate and the pages will bring you a copy.
17 Delegate Wheatley.
18 DELEGATE WHEATLEY: Mr. Chairman, and Ladies
19 and Gentlemen of the Committee of the Whole: This report,
20 Committee Recommendagion GP-12 is for the most part self-
21 explanatory. Its purpose is to provide an omnibus theme

1 in which the new provisions of the Constitution when rati-
2 fied will take effect. A specific provision is made for
3 transitory provisions which would in effect spell out
4 special dates for each of the articles, therefore, unless
5 there is further questioning on it, I feel that the time
6 spent would be wasted in going into further explanation.
7 I am sure all of you have a copy of the recommendation
8 which again states that unless specifically provided
9 otherwise, the effective date of the new Constitution
10 would be July 1, 1968, and that the Constitution of 1867
11 would then at that time cease to be effective. I might
12 add although the date is somewhat arbitrary, it was felt
13 July 1 would be the most practical considering the State's
14 new fiscal year would begin at that time. With that I
15 would be open to questions.
16 THE CHAIRMAN: Any questions of the Chairman of
17 the Committee?
18 Delegate Gleason.
19 DELEGATE GLEASON: Mr. Chairman, I would like to
20 inquire as to whether this date of July 1st, 1968, has been
21 approved by the Liaison Committee from the General Assembly.

1 DELEGATE WHEATLEY: I heard from some of the
2 critics on the sidelines and from a memo that this was the
3 data agreed upon. Unless I hear to the contrary, I will
4 assume that it be satisfactory.
5 THE CHAIRMAN: Delegate Gleason.
6 DELEGATE GLEASON: I think it would be import-
7 ant to have concurrence on this date.
8 THE CHAIRMAN: The Chair might amplify that a
9 little bit, Delegate Gleason.
10 Great care is being taken by the persons draft-
11 ing the Transitional Provisions to be submitted to the
12 Convention to allow sufficient time for the General
13 Assembly to act in any area where it is necessary. This
14 particular recommendation does not, of course, mean that
15 the entire Constitution and all its provisions will be
16 effective on July 1, 1968.
17 In addition to that, there have been discussions
18 between the leaders of the General Assembly and the officers
19 of the Convention as a result of which the General Assembly
20 will probably provide for a joint committee consisting
21 of representatives of the Senate, representatives of the

1 House of Delegates and representatives of the Convention
2 to continue on an indefinite basis, assisted by an ade-
3 quate staff to work out a program for the Legislature.
4 All of this is being considered very carefully in connec-
5 tion with the preparation of the schedule of the transi-
6 tion provisions.
7 Delegate Grant.
8 DELEGATE GRANT: Mr. Chairman, I have two or
9 three questions about this.
10 First of all, are the words "except as other-
11 wise specifically provided in the Schedule of Transitional
12 Proceedings" intended as a modifier to the phrase "this
13 Constitution shall become effective", or is it intended
14 for the modifier to the phrase "that the Constitution of
15 1867 shall cease to be effective"?
16 THE CHAIRMAN: Add "or both".
17 DELEGATE GRANT: Or both.
18 THE CHAIRMAN: Delegate Wheatley.
19 DELEGATE WHEATLEY: The language would apply to
20 July 1, 1968, and the 1867 Constitution unless otherwise
21 provided would not be included. The Constitution of 1867

1 would be superseded as of this date unless -- we had
2 talked today of the amendment suggested by Delegate
3 Scanlan -- it was rejected. I would again defer to some-
4 one who served on the Ad Hoc Committee who worked on the
5 specific things if there be another intent involved.
6 THE CHAIRMAN: The Chair can answer that because
7 the language was suggested by the Ad Hoc Committee. It was
8 intended that the Constitution shall become effective and
9 the Constitution of 1867 shall be superseded simultaneously
10 and the July 1, 1968, date applies to both.
11 Delegate Grant.
12 DELEGATE GRANT: I wasn't concerned about the
13 July 1, 1968, date. I understand that. The question is
14 about "as otherwise specifically provided".
15 THE CHAIRMAN: The "except" clause would apply
16 to both because one would become effective and the other
17 would cease to be effective. The exception would apply
18 to both.
19 Delegate Grant.
20 DELEGATE GRANT: The problem arises on the
21 amendment that was made to GP-9 which says all local

1 legislation and all other law including common law in
2 force on June 30, 1968, and so forth and so on shall con-
3 tinue in effect.
4 In other words, it appears that the two of
5 them are in opposition to each other and there is a con-
6 flict between them. This one is a flat statement that
7 unless it is otherwise provided in the transition legisla-
8 tion that the 1867 Constitution ceases to be effective,
9 whereas in GP-9 as amended and adopted, it would appear
10 that those relative provisions of the Constitution of 1867
11 are still in effect and would govern legal actions and so
12 forth, all of which are preserved, and would be particu-
13 larly effective. That is why I thought you might want to
14 be a little more specific.
15 Delegate Wheatley.
16 DELEGATE WHEATLEY: GP-9 in essence becomes a new
17 authorization and that would be a primary source of those
18 carried over from 1867. The primary reliance would be on
19 the new Constitution.
20 That would be the primary basis rather than a
21 second degree authorization; I think this would be totally

1 substantiated by GP-9.

2 THE CHAIRMAN: Delegate Grant, I am not sure I
3 followed your earlier question. Delegate Wheatley appar-
4 ently did but I don't think I did. Would you mind re-
5 stating it?

6 DELEGATE GRANT: The problem arose in GP-12.
7 You make the flat statement that as of the first of July --
8 first, as I understand it from the answers of the Chairman,
9 the Constitution becomes effective.

10 Secondly, this Constitution becomes effective
11 and the 1867 Constitution ceases to be effective, and to
12 both of them, the only modifier is "except as otherwise
13 provided in the Schedule of Transitional Provisions".
14 However, GP-9 states that all other law in force on June
15 30 insofar as not in conflict with the Constitution shall
16 continue in force.

17 My specific question was since there are a num-
18 ber of actions and so forth preserved in GP-9, whether we
19 can make the flat statement that the Constitution of 1867
20 ceases to become effective except as modified in the
21 Transitional Provisions or might perhaps say except as

1 otherwise provided herein which would reflect back to GP-9
2 particularly since GP-9 ends by saying "except as modified
3 by this Constitution".
4 We are trying to get too much into too few
5 words.
6 THE CHAIRMAN: I am still missing your precise
7 point, Delegate Grant, and I am sorry. GP-9 refers to law,
8 statutes and unwritten law, case law. Are you reading
9 that as including within the term "law" the Constitution
10 of 1867?
11 DELEGATE GRANT: Yes.
12 THE CHAIRMAN: I do not think that was intended.
13 DELEGATE GRANT: I would differ with the Chair
14 possibly on that because of the fact that it is the intent
15 apparently to preserve a number of rights of actions and
16 other liabilities which will be bottomed on the 1867
17 Constitution, bonding being one of them. However, even
18 assuming that to be correct, it ends with saying "except
19 as modified in this Constitution".
20 Then GP-12 says the Constitution ceases to be
21 effective on July 1 unless there is something in the

1 Transitional Provision. There is nothing there that will
2 refer back to what is taken care of in GP-9. What I am
3 suggesting to the Chairman is that you might want to say
4 "except as otherwise specifically provided in this Consti-
5 tution and in the Schedule of Transitional Legislation".
6 THE CHAIRMAN: It was intended to avoid that
7 situation if at all possible so that we have no doubt or
8 question as to the effective date. It is either here or
9 in the Transitional Provisions and not to be read by
10 implication elsewhere.
11 Delegate Grant.
12 DELEGATE GRANT: I understand, but GP-9 appears
13 to be one of these Mother Hubbard clauses which would take
14 care of all rights of action and I think specifically bond-
15 ing and other things which would be based on the 1867
16 Constitution.
17 THE CHAIRMAN: Delegate Wheatley.
18 DELEGATE WHEATLEY: I might elaborate on this.
19 I think the result would be the same, but the reasoning
20 would be different in this respect that GP-9 would be
21 cited as the authority for the continuation without

1 reference to a second degree authority in the 1867 Consti-
2 tution, so that the result would be the same as you sug-
3 gest, but it would seem more efficient to me to cite GP-9,
4 that reference in the new Constitution as the source for
5 this rather than taking it to the second degree. I think
6 the result would be the same, but I would say that the
7 language might not be required.
8 THE CHAIRMAN: I am afraid I am very dull, but
9 I am still not getting the point that you are driving at.
10 As the Chair reads GP-9 and this is as the Ad Hoc Committee
11 was considering it because these two things were considered
12 by this committee together, what GP-9 is saying is that
13 all law, embracing not only statutory law, but also case
14 law, but not including the Constitution itself, in force
15 on June 30, 1968, to the extent that it is not in conflict
16 with this Constitution and this Constitution then would
17 include not only the document proper, but the schedule of
18 transitional provisions attached to it, that that law
19 would continue to the extent that it is not in conflict.
20 Now --
21 Delegate Grant.

1 DELEGATE GRANT: I would suggest to the Chair
2 that that is probably too narrow a definition of the word
3 "law". There are certain constitutional provisions which
4 certain obligations are bottomed on and bonding comes to
5 mind.
6 That would have to be carried over. 9 would
7 carry over except for the last clause. GP-12, being one
8 of the provisions, says that the 1867 Constitution then is
9 no longer effective.
10 THE CHAIRMAN: The first part dealing with the
11 continuance of law was not intended to be affected by the
12 last clause. The last clause was continuance of actions.
13 I would agree with you, you might have some actions con-
14 tinued. This clause would continue it or at least it is
15 intended to continue notwithstanding the fact that the
16 Constitution itself by virtue of the provisions of GP-12
17 would cease to have effect on some given date.
18 Now, is your problem one where you don't see how
19 the right to continue if the Constitution on which it was
20 based did not continue.
21 Delegate Grant.

1 DELEGATE GRANT: I think that is the basic prob-
2 lem. I think in the case of Baltimore City where their
3 bonding capability is contained for certain things in the
4 provision of the old Constitution, I think it is simply
5 a matter of style and drafting. What I was going to sug-
6 gest is that 9 and 12 should be considered together.
7 THE CHAIRMAN: May I make this suggestion that
8 the Committee on Style and Drafting note the problem,
9 that GP-9 and GP-12 must be reconciled, so that there is
10 no inconsistency between the two. Would you be content
11 to leave it to them on that basis?
12 Delegate Penniman, I assume you made a note of
13 the colloquy. Any further questions of the Committee
14 Chairman?
15 Delegate Chabot.
16 DELEGATE CHABOT: Do I understand correctly
17 that the Transitional Provisions will include such things
18 as the reorganization of the executive branch and the
19 provisions regarding charters for or instruments of
20 government for counties that do not have them.
21 THE CHAIRMAN: They will not. They will be in-
cluded in the schedule of legislation because they will be

1 statutory in character.

2 Delegate Chabot.

3 DELEGATE CHABOT: The mandate that there shall

4 be a reorganization --

5 THE CHAIRMAN: Oh, no. You said the reorganiza-

6 tion. I thought you meant the actual reorganization.

7 DELEGATE CHABOT: I meant the provisions that

8 we had voted upon mandating that there shall be a reorgani-

9 zation and outlining who has the power to effectuate it

10 for certain years.

11 THE CHAIRMAN: That will be in the Transitional

12 Provision.

13 DELEGATE CHABOT: Aren't those things intended to

14 be a part of the Constitution, the language that is used

15 here is attached to the Constitution?

16 THE CHAIRMAN: What things? The Transitional

17 Provisions?

18 DELEGATE CHABOT: The Transitional Provisions.

19 THE CHAIRMAN: They take effect as a part of

20 the Constitution under the specific terms of the enabling

21 act. The enabling act says the new Constitution shall take

1 effect as provided therein or as provided in the Schedule
2 of Transitional Provisions attached thereto. The schedule
3 has the same effect as the Constitution but is not part of
4 it.
5 Delegate Chabot.
6 DELEGATE CHABOT: I had understood that a
7 schedule of effective dates would merely indicate when the
8 Constitutional provisions take effect. But the things I
9 described, at least, as I understood them, were mandates
10 as to powers that could be exercised at certain times.
11 THE CHAIRMAN: The Schedule of Transitional Pro-
12 visions contains a list of effective dates, but it is more
13 than a list of effective dates. It actually contains
14 transitional provisions.
15 Are there any other questions of the Committee
16 Chairman?
17 The Chair inquires: Are there any amendments to
18 Committee Recommendation GP-12?
19 The Chair has none and hears none.
20 Are you ready for the question?
21 Is there any discussion?

1 The question arises on the approval of Committee
2 Recommendation GP-12. Is there any discussion?
3 The Clerk will ring the quorum bell.
4 The question arises on the approval of Committee
5 Recommendagion GP-12.
6 A vote Aye is a vote in favor of the approval
7 of the recommendation and a vote No a vote against.
8 Cast your votes.
9 Has every delegate voted?
10 Does any delegate desire to change his vote?
11 The Clerk will record the vote.
12 There being 103 votes in the affirmative and none
13 in the negative, the Committee Recommendation GP-12 is
14 approved.
15 This is the first time that the Chairman of the
16 Committee on Calendar and Agenda has been presented
17 precisely with this problem, the problem being that we
18 concluded the agenda in advance of the usual hour for ad-
19 journment and we have a question as to the schedule for
20 tomorrow.
21 The Committee on Style and the group working on

1 the Ad Hoc provisions which consist of the Chairman and
2 staff advisers for each committee are still very hard
3 pressed for time. It is awfully difficult to estimate
4 just how much time will be needed for consideration of the
5 items on the agenda tomorrow. It would appear, however,
6 that we could conclude consideration of those in one-half
7 day. It would be much better to allow the two committees
8 to work tomorrow morning and be able to present their
9 reports tomorrow afternoon so that they will be read over
10 the desk than to have the Convention meet in the morning
11 and not in the afternoon. I think therefore that we will
12 follow that procedure.
13 The Chair recognizes Delegate Powers.
14 DELEGATE POWERS: Mr. Chairman, I move that the
15 Committee of the Whole rise and report the approval of
16 Committee Recommendation JB-2 and to report the approval
17 of Committee Recommendation R&P-2 with respect to Sections
18 10, 11 and 13, as amended.
19 THE CHAIRMAN: All in favor, signify by saying
20 Aye; contrary, No.
21 The Ayes have it and it is so ordered.

1 (The mace was replaced by the Sergeant at Arms.)

2 Whereupon, at 5:05 p.m., the Committee of the

3 Whole rose, and the Convention reconvened.)

4 THE PRESIDENT: The Convention will please come

5 to order.

6 On behalf of the Committee of the Whole the

7 Chair reports that the Committee has considered Committee

8 Recommendation JB-2 and has approved it. Committee Recom-

9 mendation JB-2 is referred to the Committee on Style, Draft-

10 ing and Arrangement.

11 The Committee of the Whole further reports that

12 it has considered Committee Recommendation R&P-2 with

13 respect to Sections 10, 11 and 13, as amended, and has

14 approved the recommendation with respect to those three

15 sections as amended.

16 The Committee Recommendation with respect to

17 those three sections as amended is referred to the Commit-

18 ttee on Style, Drafting and Arrangement.

19 The Committee of the Whole further reports that

20 it has had under consideration Committee Recommendation GP-

21 12 and has approved the recommendation in the form submitted,

1 the recommendation is referred to the Committee on Style,
2 Drafting and Arrangement.
3 Reports of committees?
4 The Committee of the Whole Report No. 23, the
5 Clerk will read the report.
6 MR. QUILLEN: Report of the Committee of the
7 Whole No. 23.
8 This report covers matters in General Order No.
9 17, Committee Recommendation GP-6.
10 A report on Committee Recommendagion GP-6, a
11 report on public education and higher education.
12 THE PRESIDENT: The report has heretofore been
13 referred to the Committee on Style, Drafting and Arrange-
14 ment.
15 Report of the Committee of the Whole No. 24.
16 The Clerk will read the report.
17 MR. QUILLEN: Report of the Committee of the
18 Whole No. 24.
19 This report covers matters in General Order No.
20 20, Committee Recommendation No. GP-7.
21 A report on Committee Recommendation GP-7

1 (Amendment of the Constitution).

2 THE PRESIDENT: The Report of the Committee of

3 the Whole No. 24 has heretofore been submitted to the

4 Committee on Style, Drafting and Arrangement.

5 Report of the Committee of the Whole No. 25.

6 MR. QUILLEN: Report of the Committee of the

7 Whole No. 25.

8 This report covers matters in General Order No.

9 21, Committee Recommendation No. GP-8.

10 A report on Committee Recommendation GP-8 (Con-

11 stitutional Convention).

12 THE PRESIDENT: The Committee of the Whole Re-

13 port No. 25 has heretofore been referred to the Committee

14 on Style, Drafting and Arrangement.

15 Committee of the Whole No. 26. The Clerk will

16 read the report.

17 MR. QUILLEN: Report of the Committee of the

18 Whole No. 26.

19 This report covers matters in General Order No.

20 22, Committee Recommendation No. GP-9.

21 A report on Committee Recommendation GP-9

1 (Effect of Constitution on Existing Law).

2 THE PRESIDENT: The report of the Committee of

3 the Whole No. 26 has heretofore been referred to the Com-

4 mittee on Style, Drafting and Arrangement.

5 Committee Report No. 27.

6 The Clerk will read the report of the Committee

7 of the Whole.

8 MR. QUILLEN: Report of the Committee of the

9 Whole No. 27.

10 This report covers matters in General Order No.

11 23, Committee Recommendation No. GP-10.

12 A report on Committee Recommendation GP-10 (Im-

13 peachment).

14 THE PRESIDENT: Report of the Committee of the

15 Whole No. 27 has heretofore been referred to the Committee

16 on Style, Drafting and Arrangement.

17 I have just a few announcements to make.

18 In the spirit of the season, we have been try-

19 ing belatedly, but for some days now, to arrange for some

20 seasonal singing before adjourning at the conclusion of

21 the session tomorrow evening. We had hoped that we perhaps

1 could have the Naval Academy Glee Club. Unfortunately
2 they go on holiday today and the same was true of several
3 other groups. We have, however, been fortunate in being
4 able to arrange for singing here in the Chamber at the
5 conclusion of the session tomorrow by the Boys Choir from
6 the Immaculate Heart of Mary Parish near Towson, Maryland.
7 This is a group of 28 boys who have received a great deal
8 of publicity recently. They sang not too long ago in the
9 Senate Cafeteria in Washington. As a result of that, they
10 were invited by Mr. Chief Justice Warren to sing for a
11 function of the Supreme Court. They have also sung at the
12 White House. They are singing tomorrow evening a benefit
13 performance in Baltimore and have kindly consented to come
14 down here beforehand and sing the same program for us. It
15 will be a half hour. The singing, of course, will be a
16 capella because we have no musical instruments. They will
17 occupy the gallery behind the rostrum of the President.
18 They will be here around 5 or shortly thereafter. Whether
19 or not we finish our agenda, and I think we will, we will
20 plan to recess or adjourn promptly at 6 so that the singing
21 could then take place because they must leave here by 6:30

1 in order to complete their engagement in Baltimore.

2 I think you will enjoy it and I would suggest

3 to those of you who are able to have your spouses present

4 to suggest that they come down. I think they, too, would

5 enjoy it. The singing will start at sometime then between

6 5 and 6, not later than 6 at the very latest. That means

7 that you will be away from here by 6:30.

8 At the present time, it would appear that we will

9 be able to work out the schedule indicated to you yesterday

10 of having the Convention meet -- adjourn tomorrow until

11 Wednesday and then have the Convention meet on afternoons

12 and evenings only, Wednesday, Thursday and Friday, hope-

13 fully to be able to conclude by then.

14 This will leave the intervening days unfortu-

15 nately and also the mornings of next week for the work of

16 the Committee on Style, Drafting and Arrangement and I

17 think I can say to you without any possibility of contra-

18 diction that notwithstanding the tremendous amount of work

19 heretofore done by all of the committees of the Convention,

20 the hardest working committee right now is the Committee on

21 Style, Drafting and Arrangement.

1 It is possible after we have some conferences
2 with Delegate Penniman tomorrow morning late and before
3 the session that the schedule for next week could be even
4 shorter than indicated.
5 On the other hand, after a consideration of all
6 of the reports of the Committee on Style, Drafting and
7 Arrangement which I hope will be concluded by the end of
8 this week, it might appear that the debate will be more
9 extended.
10 In either event we would hope to conclude con-
11 sideration by the Convention of all second readings before
12 we adjourn next week, even if this would mean sitting on
13 Saturday of next week. This seems to be a very unlikely
14 eventuality. I would think that we could conclude by the
15 three days of afternoon and evening sessions. If it
16 would appear that consideration would require more than
17 those six sessions, we would probably schedule three ses-
18 sions on Friday, morning, afternoon and evening, rather
19 than a Saturday session, so that if at all possible, there
20 will be no session on Saturday before New Years. It is
21 contemplated that the Convention would then recess over

1 tje Mew Uear tp gove tje Convention a chance to -- and
2 particularly the Committee on Style, to take a long, hard
3 look at the entire Constitution which should then be in
4 practically complete form. I plan to ask certain delegates
5 not on either the Committee on Style or the Ad Hoc Commit-
6 tee drafting Transitional Provisions to do a little extra
7 homework and particularly review certain sections of the
8 Constitution, to do everything possible to make sure that
9 we have not had some inconsistency that is being overlooked.
10 I also plan to ask outside groups such as the
11 Committee of the State Bar Association, the Baltimore City
12 Bar Association and perhaps some others and also some out-
13 side persons who have extended knowledge in this field.
14 I would, however, very strongly urge each dele-
15 gate next week when you are not in continuous session dur-
16 ing the morning to take the time to sit down quietly by
17 yourself and in small groups and read through the rewritten
18 language that we have approved on second reading. It
19 happens, of course, that in the course of debate and
20 amendments from the floor that errors creep in that are
21 not intended and I would like this Convention to do every-

1 thing possible to avoid any kind of error of that sort.

2 Are there any announcements by committee chair-

3 men?

4 Delegate Moser.

5 DELEGATE MOSER: The Local Government Committee,

6 Mr. President, will meet tomorrow at 11 a.m. and not at 9

7 a.m. We really will meet tomorrow at 11 a.m.

8 THE PRESIDENT: Any other announcements by com-

9 mittee chairmen.

10 Delegate Penniman.

11 DELEGATE PENNIMAN: The Committee on Style will

12 meet immediately after this session is over.

13 THE PRESIDENT: Any other announcements?

14 Delegate Fornos.

15 DELEGATE FORNOS: Mr. Chairman and fellow dele-

16 gates: I would like to have the Convention welcome a dis-

17 tinguished colleague of mine in the House of Delegates,

18 Mrs. Walter Wolinsky. (Applause.)

19 THE PRESIDENT: Delegate Morgan.

20 DELEGATE MORGAN: Mr. President, the Committee

21 on the Executive Branch will meet tomorrow briefly,

1 probably at 11 a.m. in the morning. I don't know the
2 exact time, but if they can get in touch with me, I will
3 tell them that we will have a picture taken and then we
4 are also going to discuss some miscellaneous matters.
5 THE CHAIRMAN: The Chair should have announced
6 earlier that the agenda that I indicated is based on the
7 assumption that we have now on the agenda every matter re-
8 maining to be considered by the Committee of the Whole.
9 If we are in error about this, if there is any matter at
10 all that any committee has which still requires action by
11 the Committee of the Whole, I would appreciate it if the
12 Chairman would advise Delegate Powers or me today.
13 Delegate E. J. Clarke.
14 DELEGATE CLARKE: Mr. President and Ladies and
15 Gentlemen: As you all are well aware we have several
16 delegates and some relatives and also the assistant chief
17 clerk who are ill at this time, some of them are very ill
18 and several of us have thought that it would be appropriate
19 to send them some sort of a season's greeting in the way of
20 a gift or arrangement and I would like to suggest that we
21 each put in one dollar, those of us who are here, so that
we can order something sent to these people and let them

1 know that we are thinking of them at Christmas and during
2 the holiday season and if it is appropriate and with your
3 approval or the approval of the Convention, the chief page
4 will have a page at the door upon adjournment wher everyone
5 could leave a dollar in the box and if this is approved, I
6 have asked Delegate Freedlander and Delegate Hopkins to
7 assist me in collecting this and selecting something
8 appropriate and the names that we have now are I think
9 obvious.
10 However, if anyone else knows of any delegate
11 or immediate relative who is seriously ill at this time,
12 we would appreciate hearing from them.
13 Thank you, sir.
14 THE PRESIDENT: Thank you. I think that is an
15 excellent thought and if Delegates Clarke, Hopkins and
16 Freedlander will undertake that, I am sure we will all be
17 very much appreciative. I assume that the Convention will
18 authorize that those three send whatever they send with the
19 best wishes of the Convention for a speedy recovery.
20 Delegate Moser.
21 DELEGATE MOSER: Has there been any more thought

1 given to getting President Johnson to appear before we
2 finish?
3 THE PRESIDENT: The invitation was extended to
4 President Johnson sometime ago and the answer was no, he
5 wasn't able to appear at that time and it was purposely
6 left open. The matter was left if at any time he could
7 speak to the Convention, the aide was to call me. I have
8 not talked to him since. I will be glad to do so.
9 Are there any further announcements?
10 If not, the Chair recognizes Delegate Powers.
11 First, all delegates not present at roll call
12 may indicate their presence on supplemental roll call.
13 Delegate Powers.
14 DELEGATE POWERS: Mr. President, I move that we
15 adjourn until 1 p.m. tomorrow.
16 THE PRESIDENT: All in favor, signify by saying
17 Aye; contrary, No.
18 The Ayes have it and it is so ordered.
19 (Whereupon, at 5:20 o'clock p.m., the Convention
20 was adjourned to reconvene at 1:00 o'clock p.m., Thursday,
21 December 21, 1967.)

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3 CONSTITUTIONAL CONVENTION
4 OF THE
5 STATE OF MARYLAND
6
7
8 ----------
9
10 Chamber of the House of Delegates
State Capitol
11 Annapolis, Maryland
12 December 21, 1967 - 1:30 p.m.
13
14 ----------
15
16 HONORABLE H. VERNON ENEY
17 PRESIDENT
18
19
20 Reported by:
Dorothy Fitzgerald
21 and
C. L. Hurban

1 P R O C E E D I N G S

2 THE PRESIDENT: The Convention will please come

3 to order.

4 The invocation today will be offered by the

5 Reverend F. Normal Van Brunt of St. Paul's Methodist Church

6 in Hagerstown.

7 Reverend Van Brunt is Delegate Beachley's minister.

8 Reverend Van Brunt.

9 REVEREND VAN BRUNT: Let us pray.

10 O Thou great God, whom we recognize as the source

11 of life, we pause at this moment to give thanks for the

12 wisdom and truth whereby men have been guided in history

13 that the many may have the benefits of freedom and dignity

14 in the pursuit of life.

15 We would work diligently in our time for the

16 purpose of providing the framework whereby the hard-earned

17 advantages of democracy may be preserved and enlarged for

18 the generations yet unborn. To this end we pause, invoking

19 Thy blessing upon this gathering, and the work of this day,

20 beseeching that wisdom, sound judgment and earnest endeavor

21 may prevail in the tasks that are ahead, that the work of

1 this body may bless men and their lives down the future's
2 broadening way.
3 For Thy name's sake we pray. Amen.
4 THE PRESIDENT: Roll call.
5 Has every delegate answered the roll call?
6 The Clerk will record the roll call.
7 The Chair recognizes Delegate Powers, Chairman
8 of the Committee on Calendar and Agenda.
9 DELEGATE POWERS: Mr. Presid ent, I move the
10 adoption of today's calendar.
11 THE PRESIDENT: Is there a second?
12 (The motion was duly seconded)
13 All in favor signify by saying Aye. Contrary No.
14 The Ayes have it, and it is so ordered.
15 The Chair recognizes Delegate Adkins.
16 DELEGATE ADKINS: Mr. President, on a point of
17 personal privilege I should like to ask the Convention to
18 welcome 70 students from the Salisbury Elementary School
19 who are now in the gallery over the rostrum with their
20 teachers, Mr. Wylie, Mr. Fox and Mr. Waller, and their
21 principal, Mr. Foxwell. I hope the Convention will give them

1 their usual warm reception. (Applause).

2 THE PRESIDENT: Report of committees.

3 DELEGATE JAMES: Mr. President.

4 THE PRESIDENT: Delegate James.

5 DELEGATE JAMES: A point of personal privilege.

6 THE PRESIDENT: State your privilege.

7 DELEGATE JAMES: The Chair would like to read

8 a letter addressed to the Honorable -- I mean I would like

9 to read a letter addressed to the Honorable J. Millard Tawes,

10 Constitutional Convention Meeting:

11 "Dear Governor Tawes:

12 "It gives me great pleasure to inform you that

13 my Government has conferred upon you the National Order of

14 the Southern Cross in the degree of 'Grande Oficial' in

15 recognition of the valuable services you have rendered to

16 Brazil.

17 "Please accept my warmest congratulations on the

18 distinction which has so deservedly been bestowed upon you.

19 "I will be happy to communicate with you again

20 regarding the time and date of presentation.

21 "Sincerely yours. (signed) Vasco Leitão de Cunha,

Brazilian Ambassador."

1 I might say that Maryland is the sister state of
2 the State of Brazil, and this is a continuation of good
3 relationships between our sister State of Brazil and the
4 State of Maryland.
5 THE PRESIDENT: I think it is an honor.
6 (Standing ovation)
7 THE PRESIDENT: I have to address you, Governor,
8 as Governor Tawes now, rather than Delegate Tawes, since
9 this honor comes to you in that capacity, and express to
10 you on behalf of the Convention the feeling which I am
11 sure you sensed just now at the standing ovation you
12 received.
13 I believe I can say without fear of contradiction
14 that the Convention shares with the State of Maryland the
15 joy that you have b een thus honored, and also reaffirms
16 its feeling when they elected you its Honorary President.
17 The Chair would be delighted to have you reply.
18 (Applause)
19 GOVERNOR TAWES: Thank you very much, Mr.
20 President. You have thrown a real challenge to me because
21 it was not my intention to ever take this microphone and

1 address this Convention during this 1967 Convention session.
2 Delegate Fornos came and borrowed that letter
3 a little while ago from me,and I had no idea what he was
4 going to do with it, but I do appreciate the kindness of
5 my good colleage Delegate James.
6 I might say, Mr. President and delegates of the
7 Convention, that a few years ago under the auspices of our
8 United States State Department, this country inaugurated
9 the Alliance for Progress programs. Maryland was one of
10 the pioneer States of the United States to become a part of
11 the Alliance for Progress, partners of the Alliance program,
12 and we selected the State of Rio in Brazil. And the State
13 Department invited me to visit Brazil a few years ago, and to
14 carry our good wishes to them, and to explain to the Governor
15 of the State of Rio, whose guest I was while there.
16 This honor comes as quite a surprise. We are
17 going over on the 28th of December at 10 o'clock in the morn-
18 ing to the Brazilian Embassy and I extend an invitation to
19 the delegates of this Convention to be there if they so
20 desire, and to witness the presentation of this honor.
21 What it is I know not of, but it is something I

1 of course shall receive very enthusiastically, and with
2 my thanks to them.
3 Thank you very much for giving me this
4 opportunity to speak on a subject foreign to the deliberations
5 of this Convention. Thank you.
6 (Applause)
7 THE PRESIDENT: Delegate Tawes has made known
8 to me some time ago his firm resolve not to speak in the
9 floor of this Convention during 1967. He has not broken that
10 resolve. I addressed him as Governor Tawes purposely.
11 I am very happy to tell you that in talking to
12 Mrs. Clark today she told me that Delegate James Clark is
13 much improved, is still in the hospital, and will have to
14 remain there until Christmas, but that the pain in his hand
15 has abated considerably, and he is making very good progress.
16 Also he indicated that in all probability he will
17 be able to return to the Conventionwhen it resumes its
18 sessions next week.
19 I asked her whether he would be able to use his
20 hand, and the indication was he probably would not for
21 several months, and I suggested we wouldn't be in session

1 that long, and we will have to work out some arrangement
2 for him to sign with his left hand.
3 Delegate Beachley.
4 DELEGATE BEACHLEY: I would like to rise to a
5 point of personal privilege.
6 THE PRESIDENT: State the privilege.
7 DELEGATE BEAC HLEY: I would like to call the
8 attention of this group that Mrs. Norma Van Brunt, the
9 lovely wife of the Pastor from Hagerstown, who just gave the
10 invocation, is seated in the balcony to the rear of the
11 Chamber.. I hope you will extend your usual warm welcome.
12 (Applause).
13 THE PRESIDENT: The reports of the Committees.
14 Committee of the Whole Report 22. The Clerk will read
15 the report.
16 MR. QUILLEN: Report of the Committee of the
17 Whole No. 22. This report covers matters in General Order
18 19, Committee recommendation No. R&P-2.
19 THE PRESIDENT:: The report has heretofore been
20 referred to the Committee of the Whole.
21 Committee of the Whole report No. 26. The Clerk

1 will read the report.

2 MR. QUILLEN: Report of the Committee of the

3 Whole No. 28. This report covers matters in General Order

4 No. 27, Committee recommendation No. LB-3

5 THE PRESIDENT: The report has heretofore been

6 referred to the Committee on Style, Drafting and Arrange-

7 ment.

8 The report of the Committee of the Whole No. 29.

9 The Clerk will read the report.

10 MR. QUILLEN: Report of the Committee of the

11 Whole No. 29. This report covers matters in General Order

12 No. 28, Committee Recommendation No. JB-2.

13 THE PRESID ENT: Report of the Committee on Style,

14 Drafting and Arrangement No. S&D-8. The Clerk will read

15 the report.

16 MR. QUILLEN: The Committee on Style, Drafting

17 and Arrangement Report No. S&D-8. This report covers matters

18 in Committee of the Whole Report No. 8, a report concerning

19 Committee Recommendation No. JB-1.

20 THE PRESIDENT: The report is referred to the

21 Committee on Style and Drafting.

1 Committee Recommendation JB -1 as amended, or
2 proposed to be amended by Style, Drafting and Arrangement,
3 Committee Report S&D-8 is being printed this afternoon. It
4 should be on your desk very shortly, and will be on the
5 agenda for next session of the Convention for consideration
6 on second reading.
7 I urge you to take the report with you so that
8 you can comply with the procedure heretofore announced
9 if there are any amendments to be offered. They should be
10 sponsored by at least 15 delegates, and should be filed at
11 least three hours before the beginning of the next session.
12 Because we want to conclude consideration of all
13 matters before the Committee of the Whole, we will pass over
14 for the moment the second reading of Committee recommendations,
15 return to those after the Committee of the Whole has
16 concluded its deliberations.
17 The Chair recognizes Delegate Powers, Chairman
18 of the Committee on Calendar and Agenda.
19 DELEGATE POWERS: Mr. President, I move that
20 the Convention resolve itself into the Committee of the
21 Whole for the purpose of considering General Orders of the

1 day.

2 THE PRESIDENT: Is there a second?

3 (The motion was duly seconded)

4 All in favor signify by saying Aye. Contrary No.

5 The Ayes have it.

6 (Whereupon, at 1:40 o'clock p.m., the Convention

7 resolved itself into the Committee of the Whole)

8 (The mace was removed by the Sergeant-at-Arms.)

9 THE CHAIRMAN: The Committee of the Whole will

10 please come to order.

11 The only matter under consideration is resumption

12 of Committee Recommendation GP-5. You will recall that

13 this was under consideration several days ago. Further

14 consideration was suspended in order that additional research

15 could be done. I think that has been concluded.

16 The Chair recognizes Delegate Boyer, Chairman

17 of the committee.

18 Delegate Boyer, are you prepared to proceed with

19 the presentation of committee recommendation GP-5?

20 DELEGATE BOYER: Yes, Mr. Chairman. We are

21 ready I have just sent out the committee supplementary

1 recommendation for duplication and for distribution. May I
2 suggest if you will allow us about a half hour to have it
3 printed and distributed, we can come b ack to it. We are
4 ready for the presentation.
5 This is at the request of several members of the
6 Committee of the Whole who were interested in some of the
7 legal terminology in some of the questions that were raised.
8 We have done a lot of research on this.
9 THE CHAIRMAN: Very well, under the circumstances
10 there is nothing further to do except to have the Committee
11 of the Whole rise and resume its session at another time.
12 The Chair recognizes Delegate Powers.
13 DELEGATE POWERS: Mr. Chairman , I move that
14 the Committee of the Whole rise.
15 (The motion was duly seconded)
16 THE CHAIRMAN: The motion having been seconded,
17 all those in favor signify by saying Aye. Opposed, No.
18 The Ayes have it. It is so ordered.
19 (Whereupon, at 1:46 o'clock p.m., the Committee
20 of the Whole rose, and the Convention reconvened.)
21 (The mace was replaced by the Sergeant-at-Arms)

1 THE PRESIDENT: The Committee was unable to proceed
2 withthe general orders. We will do so when permitted by
3 the Convention later this afternoon.
4 The next item on the calendar is Committee
5 Recommendation GP-2. This is second reading on the report
6 of the Committee on Style, Drafting and Arrangement.
7 The Chair recognizes Delegate Penniman, Chairman
8 of the committee, and requests that he come forward to
9 the reading desk.
10 While we are waiting for Delegate Penniman to
11 come forward, let me remind you of the announcement made
12 yesterday that immediately upon the conclusion of the session
13 today, we are fortunate in having the boy's choir from the
14 Immaculate Heart of Mary Church in Towson present a half
15 hour song program for us, seasonal carols.
16 In any event, this will not be later than the
17 hour of 6 p.m., even if we have to recess for this, because
18 they must return to Baltimore for an engagement. Hopefully,
19 it will be at a much earlier hour.
20 Delegate Penniman.
21 DELEGATE PENNIMAN: The report of the

1 recommendation of the committee is very simple in this
2 instance. The only change we made was to switch the order
3 of "environment" and "resources", because it is perhaps
4 more necessary to modify "environment"than the "resources".
5 We had to add the word "of".
6 THE PRESIDENT: Are there any questions of the
7 committee chairman.
8 Delegate Penniman, in connection with this re-
9 port, did you want to make any comment with respect to the
10 work that the Committee on Style, Drafting and Arrangement
11 is doing as to the definition of law? I have raised that
12 question simply because consideration of committee recommen-
13 dation GP-3 was heretofore deferred pending further study of
14 the other question by the Committee on Style.
15 DELEGATE PENNIMAN: The same question will
16 obviously arise when we talk about the question of local
17 government, the words "by law" when accepted will mean ---
18 I'm sorry, when antedated or preceded by "the General
19 Assembly," "The General Assembly by law" means the
20 General Assembly by public general law unless it is made
21 an exception in the section which will appear in Article 3 on

1 the legislative branch.

2 In that section we will list the exceptions which

3 have been made in Article 7 as it came from the floor

4 following the action of the Committee of the Whole. It

5 will also include in it a reference to what was section 3.17a

6 in the legislative branch, which dealt with the question of

7 special laws.

8 When the word "by law" is used not preceded

9 by the word General Assembly, then we mean a law which

10 may be a law of a county, but internal within the State.

11 That is, the words may include the General Assembly by law

12 or a law mad e by some lesser unit of government. We use

13 in one instance the word "any law" where we mean the law

14 including the federal law, or federal Constitution as well

15 as the laws inside the State, but the exceptions will be

16 included in detail.

17 I could read an item to you now. I would prefer

18 not to debate it until we get to it, but in order that

19 you understand the meaning of natural resources by law in

20 that section, it might be worth noting that when we list

21 the exceptions to the General Assembly by law,meaning public

1 general law, when we list the exceptions to it, we do
2 include in it as one of the exceptions, the words "pertaining
3 to natural environment and resources."
4 THE PRESIDENT: Are there any questions of
5 the committee chairman?
6 Delegate Boyer.
7 DELEGATE BOYER: Mr. President, if I understand
8 Delegate Penniman correctly, I am disturbed over the
9 substantive change that the Style Committee has adopted
10 which might be contrary to the intention in this particular
11 instance on GP-3. We had understood that the General
12 Assembly by law, right or wrong, was not intended to include
13 by pub lic general law, because of the many varieties and
14 ramifications of natural resourses throughout the entire
15 state.
16 DELEGATE PENNIMAN: What I was suggesting,
17 Delegate Boyer, is that the one on conservation is an
18 exception to the rule. We had talked with your committee
19 as you know, and we were making the exception to make it
20 apply as you are suggesting.
21 THE PRESIDENT: Any other questions? If not,

1 Delegate Penniman, I don't think it is d esirable that
2 you return to your seat just yet because we will probabl y
3 not have too much debate, and you will have to come back
4 again.
5 The Chair has received no amendments for
6 committee recommendation GP-3. We are concerned now only
7 with the stylistic amendments recommended by the committee.
8 Are there any further amendments as to style?
9 The Chair hears none.
10 The question therefore arises on the approval
11 of the amendments to committee recommendation GP-3 proposed
12 by the Committee on Style, Drafting and Arrangement and
13 shown in the attachment to the report No. S&D6. A vote
14 Aye is a vote in favor of the approval of these amendments,
15 or the adoption of these amendments. A vote No is a vote
16 against. Are you ready for the question?
17 Cast your votes.
18 Has every delegate voted? Does any delegate
19 desire to change his vote?
20 The Clerk will record the vote.
21 There being 96 votes in the affirmative, and four

1 in the negative, the amendments to committee recommendation
2 GP-3 proposed by the Committee on Style, Drafting and
3 Arrangement are adopted.
4 The Chair has received no further amendments of
5 substance of committee recommendation No. GP-3. Are there
6 any such amendments?
7 The Chair hears none. The question now arises
8 on the approval on second reading and adoption of
9 committee recommendation GP-3 as amended. Are you ready
10 for the question?
11 The question arises on the adoption on second
12 reading of committee recommendation GP-3 as amended. A
13 vote Aye is a vote in favor of the adoption of the
14 recommendation as amended. A vote no a vote against.
15 Cast your vote.
16 Has every delegate voted? Does any delegate
17 desire to change his vote?
18 The Clerk will record the vote.
19 There being 87 votes in the affirmative and
20 16 in the negative, the committee recommen dation GP-3 as
21 amended is adopted on second reading.

1 The next item on the calendar is the consideration
2 of the Committee on Style, Drafting and Arrangdment report
3 No. S&E-7 with respect to committee recommendation LG-1
4 The Chair recognizes Delegate Penniman.
5 DELEGATE PENNIMAN: I think that most of the expla-
6 nations are clear in the covering memorandum. I say with
7 some hesitation on page 1, line 16, it says "covering
8 governmental units in section 7.06" and it is 7.08. So the
9 reference there is not correct. Otherwise I think that we
10 are correct in the statements in the covering memorandum
11 of the Committee on Style.
12 I think as a matter of general interest and
13 partially because the whole new article or the article as
14 we have modified it in style looks as if a great deal has
15 happened to it. I would like to just give a bit of comment
16 on that.
17 In the case of 7.01 we did remove the definitions
18 from one place to put them in the sections where the topic
19 is actually being discussed.
20 In the case of section 7.02 we did not strike out
21 great quantities of this except to strike it out so that

1 they can appear in the schedule of transitory provisions.
2 In 7.06 where another whole section is removed,
3 it is the one describing or defining the law as it is used
4 throughout the Constitution, and it is the one I spoke to a
5 moment ago in connection with the section on conservation,
6 and that has been moved to Article 3 on the legislative
7 branch.
8 I think in most other instances, where there are
9 a number of words crossed out successively, it is mostly
10 because we moved an item from the bottom to the top, or
11 from the top to the bottom within a single section. The
12 thing I really want to call your attention to is the fact
13 that the Committee on Local Government had written what in
14 most respects, in all respects, we might say, was an
15 excellent article. We did not change it nearly to the
16 extent that it would appear from the way in which the
17 sections are crossed out.
18 All of this is mentioned in our covering
19 memorandum. I simply wanted to stress it because the
20 report and the original as it came from the floor as it was
21 was generally excellent, and it was not all beaten up, as

1 one might think at first glance.

2 We did where possible use definitions rather than

3 adding new vocabulary to the Constitution, so that for

4 example, the term "civil unit" was not used, rather, it was

5 defined and the definition was used. It comes up only once

6 in this article.

7 We made one change where we speak of the power of

8 the counties, where we removed the taxing power from line 4,

9 it begins in line 3: "A county may exercise any power other

10 than the judicial power, and taxing power, and perform any

11 function" and so on, unless that power has been denied to

12 it for any reasons.

13 Since the taxing power is not denied to the

14 counties, but is granted to them, it did not seem to us

15 that it should be placed under that kind of blanket denial

16 in the same sense in which the judicial power is denied to

17 the counties because it is solely a state function. I

18 don't know that there is any merit in taking up any of

19 your time with further discussion.

20 I think that the memorandum covers it reasonably

21 well.

1 THE PRESIDENT: I think it would be desirable
2 if the committee, if the chairman of the Committee on
3 Style, Drafting and Arrangement did review in d etail the
4 changes with respect to each section.
5 I say that for two reasons: One, this is the
6 first extended report of the Committee on Style, Drafting
7 and Arrangement with respect to a major article of the
8 Constitution, and, second, I realize that the delegates have
9 had very little time to study the accompanying memorandum.
10 I would therefore suggest to Chairman Penniman
11 that you do take the time to review in detail, section by
12 section, the changes made by the Committee on Style and the
13 reasons for them.
14 DELEGATE PENNIMAN: If we can turn, then, to 7.01.
15 The original 7.01 was dropped. This was the one with the
16 definitions in it. The new 7.01 then comes under the heading
17 of counties, and the establishment of counties, and counties
18 are then defined in precisely the manner in which they were
19 defined originally in the first 7.01.
20 The only other changes there have been to change
21 in one instance the position of counties, hopefully adding

1 some clarity by moving it up above and including a second
2 word there, "boundaries." Other than that, we removed the
3 word "such" since we are seeking to avoid it. I must
4 confess that we have not avoided it on all occasions, but
5 referred to them in each county affected by any of these
6 changes which might b e made by the General Assembly for
7 which there would need to be a referendum.
8 THE PRESIDENT: I don't know that anything more need
9 to be said.
10 DELEGATE PENNIMAN: We did shorten and divide a
11 sentence. We made it two. In Article 7.02, on the structure
12 of the county governmen t, we used for the most part the
13 words of the committee as it came first from the Committee
14 on Local Government, and then to the Committee of the Whole,
15 and then to us, except that here is the one where most of
16 the items had been removed that had dates set on them to
17 be put into the schedule of transitory provisions.
18 This is the provision which sets forth the
19 need to have instruments of government, and the fact that an
20 instrument of government, a proposed instrument of government
21 must be submitted to the people of the county for its

1 approval.

2 7.03 ---

3 THE PRESIDENT: Delegate Penniman, perhaps it

4 would be better to ask if there are questions on each one as

5 we go along, so let me go back.

6 Are there any questions of the committee chairman

7 as to Section 7.01 first? The Chair hears none.

8 Are there any questions as to section 7.02? The

9 Chair hears none.

10 I would like to ask one question, Delegate

11 Penniman.

12 On section 7.02 I note that the words used with

13 respect to an instrument of government are if approved by the

14 voters that it is adopted. Section 7.02 refers only to

15 the first instrument of government and amendments are

16 covered by section 7.03.

17 DELEGATE PENNIMAN: That is correct.

18 THE PRESIDENT: Very well.

19 Any other questions?

20 Delegate Sollins.

21 DELEGATE SOLLINS: Delegate Penniman, with

1 regard to section 7.02: The original section provided that
2 all counties would have to have charters or instruments
3 of government by '72. You now left this up to the transitional
4 legislation.
5 Could the Convention extend this date from 1972
6 to a future date, and would this be contrary to the
7 recommendation of the Local Government Committee?
8 DELEGATE PENNIMAN: I think this is probably a
9 substantive question rather than a stylistic one, but it has
10 been taken over by the ad hoc committee which is dealing with
11 transitory provision. It will be in the Constitution as
12 a transitory provision. I believe it is '71.
13 THE PRESIDENT: The Chair can answer that for
14 the ad hoc committee. It is not going to be included in the
15 schedule of legislation. It will be included in the schedule
16 of transitional provisions. The schedule of transitional
17 provisions are not subject to change by the General Assembly.
18 Delegate Macdonald.
19 DELEGATE MACDONALD: Does that mean, Mr. Chairman,
20 that the transitional provisions that you just made reference
21 to have constitutional stature?

1 THE PRESIDENT: Indeed it does. They are just
2 as effective as the Constitution itself, and can be changed
3 only by the people in the same manner that you could change
4 the Constitution, by amendment.
5 Any other questions as to section 7.02? If not,
6 proceed to section 7.03.
7 DELEGATE PENNIMAN: 7.03, you see an example of
8 what we have done pretty much throughout the Constitution,
9 and that is to make sure that items are in the chronological
10 ord er in which they will occur, rather than in some other
11 ordering fashion. What we have then done is also change
12 it from a negative to a positive, amendment may be proposed
13 to the voters, and I am sorry --- we do still leave it in,
14 only at the tag end, but it is a question of simply putting
15 it in the sequence in which it will occur. I think otherwise
16 no change.
17 THE PRESIDENT: Delegate Winslow.
18 DELEGATE WINSLOW: In line 48, the sentence which
19 begins with "amendments", line 47: "The amendments may also
20 be proposed by other means provided in the instrument of
21 government, or by the General Assembly by law." I take it

1 that this means provided either in the instrument of
2 government, or by the General Assembly by law.
3 DELEGATE PENNIMAN: That is quite correct.
4 DELEGATE WINSLOW: That is to say the means
5 may be provided in either of these two ways, that does
6 not mean that the amendment may be proposed by the General
7 Assembly.
8 DELEGATE PENNIMAN: That is quite correct, Delegate
9 Winslow.
10 DELEGATE WINSLOW: Then at the proper time may I
11 suggest that it either be inserted after the word "provided"?
12 DELEGATE PENNIMAN: That is fine as far as the
13 committee is concerned.
14 THE PRESIDENT: We will come back to that,
15 Delegate Winslow.
16 Delegate Needle.
17 DELEGATE NEEDLE: Mr. Chairman , in section 7.03,
18 the word "proposed" is used in several places. It is stated
19 that an amen dment may be proposed to the voters, and then
20 that the amendment shall be adopted only if approved by
21 a majority of those voting on the proposal. At no place in

1 this section does it state, and I am not suggesting that the
2 Local Government Committee necessarily stated this very
3 clearly, either, that the questionshall be placed on the
4 ballot in the county affected and voted on by the voters
5 in that county.
6 Does the word "proposed" have that meaning?
7 DELEGATE PENNIMAN: Proposed to the voters of
8 the county has that meaning, yes, sir.
9 THE PRESIDENT: Delegate Needle.
10 DELEGATE NEEDLE: And it means it must be placed
11 on the ballot in that county?
12 THE PRESIDENT: Delegate Penniman.
13 DELEGATE PENNIMAN: Yes, sir.
14 THE PRESIDENT: I am not sure that the Chair
15 understands the purport of your question, Delegate Needle.
16 DELEGATE PENNIMAN: It was not clear to me.
17 THE PRESIDENT: You referred to the sentence begin-
18 ning on line 47 of 7.03.
19 DELEGATE NEEDLE: I am referring to that sentence
20 as well as where the word "proposed" is used in line 41, and
21 I am only asking if where those words are used it means that

1 the question of whether or not an amendment shall be
2 adopted must be voted on by the voters at the polls, because
3 otherwise it only states that it must be approved by a
4 majority of those voting on the proposal. Voting where?
5 THE PRESIDENT: I think I understand your question
6 now. You did not mean to raise a question as to whether
7 the proposal itself as a proposal first had to be submitted
8 to the voters?
9 DELEGATE NEEDLE: No. I did not mean that.
10 THE PRESIDENT: Delgate Bamberger.
11 DELEGATE BAMBERGER: Delegate Penniman, may we
12 assume in every instance in which the words "by law" are
13 used here, in reference to a power of the General Assembly
14 to do something that that means a public general law, or
15 it means the kind of law which is defined on lines 5 to 11 on
16 page 3 of your committee's report, unless it is to be one
17 of the seven exceptions, and will you as we go through here
18 tell us if any of these -- if there are any exceptions
19 applicable to these sections?
20 We have covered it twice, once in 7.01 on line
21 3. Is the use of the words "by law" to be one of the

1 exceptions?

2 DELEGATE PENNIMAN: This is to be one of the

3 exceptions. This is one of those problems of definition to

4 begin with. Is it a general law when it applies to a

5 disoolution or merger of counties? Some people think that

6 it is. In order to be safe, we do have it as one of the

7 exceptions.

8 THE PRESIDENT: I think that the only other time

9 that we have passed that phrase is in line 49 on page 2. Is

10 that to be an exception?

11 DELEGATE PENNIMAN: That is not to be an exception.

12 THE PRESIDENT: Well, Delegate Penniman, your first

13 answer could apply in part to that section also?

14 DELEGATE PENNIMAN: That is correct.

15 THE PRESIDENT: Delegate Bamberger doesn't

16 look convinced. Can you explain that a little more fully

17 with respect to the sentence beginning in line 47 on page 2?

18 DELEGATE PENNIMAN: Can I ask Delegate Moser to

19 handle this?

20 THE PRESIDENT: I would rather have the Committee

21 on Style indicate what is intended. You said a moment ago

1 that with respect to 7.03 there could be a law changing the
2 county boundaries and there may be a dispute as to whether
3 this is a public general law, or some other kind of law,
4 and I take it that with respect to the sentence in 47, "If
5 a law consolidated counties or changed the boundaries, and
6 this provided or required a change in the instrument of
7 government of the county, as it may, that such amendment could
8 be proposed by a law which was not a public general law."
9 DELEGATE PENNIMAN: That is correct.
10 THE PRESIDENT: But that if a law was providing a
11 general means or method by which amendments could be
12 adopted, that could only be a public general law.
13 DELEGATE PENNIMAN: That is correct.
14 THE PRESIDENT: Delegate Moser.
15 DELEGATE MOSER: Mr. President, I was only going
16 to suggest a way for Delegate Bamberger to inform himself
17 as to where a public general law was meant. That is if you will
18 look before the word "law" wherever it appears, if you come
19 to a section and it has "public general" before it, and those
20 words are stricken out, it would indicate that it is the
21 committee's intention that that be by public general law.

1 Where there are no such words, it would indicate
2 that the committee's intention would be that it be any
3 kind of law.
4 At least, this is the way that the article was
5 drafted, and the change which is being made in old 7.06
6 will eliminate the necessity of putting that in and, in
7 fact, will adopt a different procedure.
8 Now, that basically -- I hope it doesn't tend to
9 confuse you but this is the Local Government Committee's
10 intention as the matter was passed here on the floor by
11 the Committee of the Whole.
12 THE PRESIDENT: Delegate Bamberger.
13 DELEGATE BAMBERGER: I understand that the words
14 "public general" stricken out are at least an indication
15 of what was the intention of the committee. I think it
16 might still help us when we go through here when one of
17 these is to be an exception of the rule, if you will indicate
18 that to us.
19 DELEGATE PENNIMAN: All right, I will try to do
20 that.
21 THE PRESIDENT: Delegate Marion.

1 DELEGATE MARION: Mr. Chairman, if I understand
2 what you said a moment ago, you indicated that by law in
3 line 49 might not always mean a public general law, and that
4 there could be a circumstance where an amendment might be
5 proposed by something other than a public general law, and
6 I don't think that is -- that is not the intention of
7 the sentence, as I read it, and I see "public general law",
8 "public general" stricken out before "law" and it would be
9 my understanding -- and I hope we could clear this up if
10 I am wrong, that this means, the sentence means that
11 amendments might be proposed by such other procedures as
12 the General Assembly might establish for all counties to
13 follow by a public general law.
14 THE PRESIDENT: That may very well be the meaning
15 of the sentence. The Chair was suggesting that you could
16 conceivably have a law enacted by the General Assembly which
17 consolidated two counties, which would be within one of
18 the exceptions, and could be by law other than public
19 general law. That same law might and probably would mean
20 the instrument of government or the instruments of government
21 of the two counties consolidated, and create a different

1 instrument of government which would be amendment. The
2 means by which the amendment might be approved might be
3 different from that that would be covered by a public
4 general law applicable generally to amendments by county
5 of its own charter.
6 Do I make my distinction clear?
7 DELEGATE MARION: Would that law come und er law
8 in 7.01, ir only law in 7.03?
9 THE PRESIDENT: I was merely pointing out that
10 the limitation in 47 as to the method by which amendments
11 might be proposed would not necessarily be the only way
12 by which you could have amendments because you could in
13 effect have an amendment by the General Assembly exercising
14 its power by changing the power to consolidate counties which
15 might not be by public law.
16 I think it is quite clear to the intent of this
17 section, and I did not mean to indicate to the contrary,
18 when you are talking about a county itself proposing the
19 amendments, one of the two ways would be by means indicated
20 in a public general law passed by the general assembly.
21 Any other questions as to section 7.03? The Chair

1 hears none.

2 Section 7.04.

3 DELEGATE PENNIMAN: In 7.04, as I indicated

4 earlier, this is essentially identical with the way it

5 came from the floor with the exception that we have moved,

6 we removed the words "and power to tax" from the clause

7 saying other than judicial power and power to tax, because

8 it seemed to us that they were substantially different

9 powers. One we know is exclusively a State function now, as

10 provided for in Article V, whereas the power to tax is

11 clearly a power which the county may be given and, indeed, it

12 is discussed later in that same section.

13 So we moved it down and included the power to tax

14 there all in one place. The sole purpose for moving it down

15 is to keep the taxing discussion all in one place. This is one

16 of the instances, Delegate Bamberger, when it could be done

17 directly by the grant of the legislature, it could be to one

18 county or all the counties, or several counties.

19 Are there any questions.

20 THE PRESIDENT: Delegate Bamberger.

21 DELEGATE BAMBERGER: My concern is with the

1 sentence that begins on line 10 " a county may exercise",
2 and specifically the last part of that sentence: "unless
3 any of these powers are subsequently denied to it by law."
4 Does "these powers" refer to ---
5 DELEGATE PENNIMAN: To the taxing powers which they
6 had at the time of the adoption of this Constitution which
7 they would retain, and the taxing powers given to them by the
8 general assembly subsequently.
9 THE PRESIDENT: Delegate Bamberger.
10 DELEGATE BAMBERGER: So that these powers on line
11 15 refers both to powers which the General Assembly may
12 grant to a county in the future after the adoption of this
13 Constitution, and those taxing powers which it has at the
14 date of the adoption of this Constitution.
15 THE PRESIDENT: Delegate Penniman.
16 DELEGATE PENNIMAN: That is correct.
17 DELEGATE BAMBERGER: And the General Assembly
18 may take any of those powers away from a single county.
19 It need not act alike with respect to every county in denying
20 either of those powers; is that correct?
21 DELEGATE PENNIMAN: That is correct.

1 THE PRESIDENT: Any other questions?

2 Delegate Chabot.

3 DELEGATE CHABOT: With regard to the same

4 sentence on line 12, we have the phrase "by law". It is not

5 preceded by the words "by the General Assembly"..

6 Do you mean to intend by this, based on your

7 earlier explanation, that counties that might be granted

8 these powers by some other entity, perhaps by another county

9 or by some type of regional government?

10 THE PRESIDENT: Delegate Penniman.

11 DELEGATE PENNIMAN: It is my understanding that

12 there is to be an amendment which will clarify that statement

13 at a later point, and that the amendment will say a county

14 may exercise only the taxing power granted to it by the

15 General Assembly by law.

16 THE PRESIDENT: Delegate Hanson.

17 DELEGATE HANSON: Delegate Penniman, does the use

18 of the term beginning on page 9, "the county may exercise

19 any power", and then beginning there "which has not been

20 denied to it by the General Assmebly by law", is that to be

21 construed to mean not expressly denied to it?

1 DELEGATE PENNIMAN: I would presume so.

2 DELEGATE HANSON: One other question dealing with

3 this section:

4 In the altneratives or in the conditions placed

5 upon the exercise of the county's power, did your committee

6 consider the necessity for including in this section both

7 the clause that may not exercise any power which has b een

8 transferred exclusively to another governmental unit, or

9 be denied to it by the General Assembly by law? Is it your

10 opinion that there is indeed a necessity for both of those

11 and, if so, why?

12 THE PRESIDENT: Well, I think you are asking a

13 substantive question, Delegate Hanson, that might be

14 better directed to Delegate Moser.

15 Delegate Moser, did you hear the question?

16 DELEGATE MOSER: Yes, sir, and I also heard the

17 prior question, and the answer to it.

18 If I may speak to that first, sir?

19 THE PRESIDENT: I wish you would.

20 DELEGATE MOSER: Delegate Hanson asked whether in

21 lines 8 on page 3 "denied" intended to mean expressly denied.

1 These same questions were asked when the
2 article was explained originally, or this section 7.05, and
3 then answered the question that no, it did not mean an express
4 denial, but there could be a denial by preemption of the
5 field.
6 I think Delegate Chabot may be the one who asked
7 those questions. I simply want to correct the record in that
8 regard.
9 It does not have to be expressly denied, although
10 it could be. There are two ways. I think the record is
11 fairly clear on that when this came up for first reading.
12 THE PRESIDENT: You gave as an illustration
13 preemption of the field, you didn't mean to limit it there?
14 In other words, there could be a denial by implication.
15 DELEGATE MOSER: That would be correct. It does
16 not have to be expressed, is the point.
17 THE PRESIDENT: All right.
18 DELEGATE MOSER: The second question was why the
19 words "has been transferred exclusively to another governmental
20 unit" must be in here.
21 The reason for it is that if the General Assembly

1 created another governmental unit and gave it an exclusive
2 function such as -- well, let us say the control of traffic
3 in Baltimore Harbor such as the Maryland Port Authority has,
4 unless this provision is in, that would not effect a denial
5 of the power to the county to perform the same function
6 so that you would have two units of government performing
7 the same function even though the General Assembly
8 specifically intended that the new unit would be the
9 exclusive one to perform that function, and you might have
10 some degree of chaos in that situation.
11 THE PRESIDENT: Delegate Moser, I don't think
12 you answered the present situation question, that Delegate
13 Hanson asked- I think he was asking the converse. As I
14 understand it, he asked why, if you have the provision that
15 the county didn't exercise power transferred exclusively to
16 another governmental unit, do you need the added provision
17 that it cannot exercise a power denied to it, in other words,
18 denied to it but not transferred to another unit.
19 Is that your question, Delegate Hanson?
20 DELEGATE HANSON: No. I think Delegate Moser
21 interpreted it correctly. I asked why you n eeded the

1 provision of the other when you say you can't exercise any
2 power denied it.
3 I would like to state a parliamentary inquiry.
4 THE PRESIDENT: State the inquiry.
5 DELEGATE HANSEN: When would b e the appropriate
6 time to offer an amendment relating to the definition of
7 the word "denied"? While we are still on style, or when we
8 get to the substance?
9 THE PRESIDENT: On style, after the presentation
10 of the committee, we will go back and consider the amendments
11 on style, and after that is concluded we will go back and
12 consider amendments other than style.
13 Delegate Moser.
14 DELEGATE MOSER: I simply wanted to state, or ask:
15 Let me ask a questionof the chairman of this committee. I
16 think that is probably the more appropriate way of handling
17 this:
18 Obviously you did not intend any change of
19 substance when you struck out the words " and power to tax"
20 in line 4, section 7.04. Is that correct?
21 DELEGATE PENNIMAN: That is correct.

1 DELEGATE MOSER: And you have seen the amendment
2 which I have prepared which has not as yet been distributed,
3 but which would insert the words in line 11, after the
4 word "exercise", it would insert the word "only", and
5 before the line "law" you would insert the word "General
6 Assembly" law as delegate Chabot suggested?
7 DELEGATE PENNIMAN: Yes.
8 THE PRESIDENT: Delegate Case.
9 DELEGATE CASE: Mr. President, I would take it
10 that the Committee on Style and Arrangement has decided to
11 delete the provisions of section 8.01b which was the provision
12 relating to granting of taxing powers that was approved by
13 the Committee of the Whole as recommended by SF-3. Is that
14 correct?
15 DELEGATE PENNIMAN: I think those provisions as
16 they apply to counties are covered in this, and that as
17 applied to other units, they are covered by the general
18 provisions with respect to their powers.
19 DELEGATE CASE: Before we get into that, may I
20 ask you whether or not it is the intention of your committee
21 to have any provision with respect to taxation in the new

1 Constituion?

2 DELEGATE PENNIMAN: Any separate provision?

3 DELEGATE CASE: Article, yes. In the article.

4 DELEGATE PENNIMAN: As in 7.02b.

5 DELEGATE CASE: Well, give it the number you

6 care to give it.

7 DELEGATE PENNIMAN: I think it will be 7.01a.

8 DELEGATE CASE: 8.01.

9 DELEGATE PENNIMAN: Excuse me. 8.01a. 8.01b

10 is included in the provisions in 7.04, and in the subsequent

11 provisions with respect to municipal corporations. This,

12 as I understand it, was a question which somebody was going

13 to raise on the floor as to whether or not it should be here

14 or put in a separate section later on. I put this here so

15 that the opportunity would arise for precisely that proposal

16 if somebody wishes to make it.

17 THE PRESIDENT: Delegate Case.

18 DELEGATE CASE: I believe one of those of the

19 Committee on S-ate, Finance and Taxation was to have an

20 article in the Constitution where lawyers and other interested

21 people could go to find out just what the tax rules are, so

to speak, and if the intention is to scatter it around all

1 through the rest of the Constitution, I think we ought
2 to know about it now.
3 DELEGATE PENNIMAN: This is the way it would
4 happen with respect to only this 7.01a and b.
5 THE PRESIDENT: 8.01 a and b.
6 DELEGATE PENNIMAN: I am sorry. 8.01b.
7 DELEGATE CASE: Well, turning to 8.01b, it
8 dealt with all local units of government, counties ---
9 DELEGATE PENNIMAN: Right.
10 DELEGATE CASE: --- regional governments?
11 DELEGATE PENNIMAN: Right.
12 DELEGATE CASE: If this section takes care of
13 the county where are the --
14 DELEGATE PENNIMAN: The other sections do not
15 make specific reference to tax, but the provisions with
16 respect to their powers are the same as with respect to
17 taxes, I believe.
18 THE PRESIDENT: Delegate Case.
19 DELEGATE CASE: In other words,what you are saying
20 is that other than with respect to the counties, other
21 local units of government operate on a residual power theory

1 and it therefore is necessary to grant such powers.

2 THE PRESIDENT: Not residual.

3 DELEGATE CASE: Non-residual.

4 DELEGATE PENNIMAN: That is right.

5 DELEGATE CASE: Is that correct?

6 DELEGATE PENNIMAN: I think there are almost

7 precise words for the other powers as you have for the

8 taxing powers.

9 THE PRESIDENT: Delegate Case.

10 DELEGATE CASE: What I am trying to establish for

11 the record is, in your opinion, is the substance of section

12 8.01b completely and fully covered in the way in which it

13 is handled in Article 7?

14 THE PRESIDENT: Delegate Penniman.

15 DELEGATE PENNIMAN: That is correct.

16 THE PRESIDENT: Delegate Maurer.

17 DELEGATE MAURER: A parliamentary inquiry.

18 THE PRESIDENT: State your inquiry.

19 DELEGATE MAURER: Is this an appropriate time to

20 ask Chairman Moser for a further definition of preemption,

21 and how it applies to powers of counties, or would you prefer,

1 Mr. Chairman , to hold that kind of a question until a later
2 date?
3 THE PRESIDENT: I think we cover that later. I
4 am not sure that I understand you. The term "preemption" is
5 not used in this draft any place of which I am aware. Is
6 that correct?
7 DELEGATE MAURER: It comes up in a sense as part
8 of the consideration of powers transferred exclusively to
9 another governmental unit, as I understand ---
10 THE PRESIDENT: If that is what you are getting
11 at, since Delegate Moser has already answered a question
12 about it, it would be better to do it now.
13 DELEGATE MAURER: All right.
14 THE PRESIDENT: Delegate Moser, would you stay
15 on the floor to respond to an inquiry?
16 DELEGATE MOSER: I will try to.
17 THE PRESIDENT : Delegate Maurer.
18 DELEGATE MAURER: As I recall the discussion
19 when the local government article was presented, you talked
20 of preemption, and you gave us an example of the commercial
21 code, and you said that it was ob vious that a local government
or a county would not legislatie in that field.

1 Does that mean that in this instance in which
2 you have a fairly comprehensive statute, this constitutes
3 preemption, or does it mean only those specific items which
4 are the subject of legislation are preempted, and if I may
5 use as an example, article 77 covering education.
6 THE PRESIDENT: Delegate Moser.
7 DELEGATE MOSER: I thought you might use that as
8 an example. It is in each case the question of the intent
9 of the legislature to preempt or not to preempt the
10 field that is the test.
11 I gave the example of the uniform commercial
12 code. I think I gave an example also of the laws of -- well,
13 the probate laws, for instance, which clearly illustrate
14 an intention to prempt the field.
15 I would assume that a court making a determination
16 -- and ultimately this is the way it would be done -- I would
17 deem it fairly clear that in the area of school boards, for
18 example, their composition and manner of selection, that
19 article 77 does in fact preempt the field. I don't think
20 that there is any question about that.
21 THE PRESIDENT: Delegate Maurer.

1 DELEGATE MAURER: I am speaking to the whole
2 article 77, because it is an unusual situation in which some
3 powers are given to local boards of education, and some to
4 the State Board of Education.
5 Does it require some further action for the
6 legislature to preempt the field, or could county governments
7 begin to legislate in the field of education as well?
8 THE PRESIDENT: D elegate Moser.
9 DELEGATE MOSER: Specifically, what part of the
10 field of education?
11 DELEGATE MAURER: If I may use as an example, I
12 believe the code, article 77, does not go into detail in
13 many of the clerical and custodial employees, it doesn't
14 set salary rates, and so forth.
15 THE PRESIDENT: Delegate Moser.
16 DELEGATE MOSER: I would assume that in areas
17 such as that that possible I really am not sure of this,
18 that possibly the county if it is not an area into which the
19 General Assemb ly has gone, the county could act.
20 After all, someone has to set these. Now, if
21 they empower -- and I would think this is what 77 does --

1 if they empower the school boards to do these things, then
2 this in essence would be a preemption by giving that power
3 to the local school boards to do those things, and I
4 think that is the case in that circumstance.
5 THE PRESIDENT: Delegate Maurer.
6 DELEGATE MAURER: Then preemption as such is best
7 if it is stated in the legislation and not a matter of
8 interpreting it, is this what you are saying? That it is not
9 an obvious matter that just because it is legislated
10 upon this constitutes preemption of the whole field. This
11 is my difficulty understanding exactly what preemption is,
12 and how it is accomplished.
13 THE PRESIDENT: Delegate Moser.
14 DELEGATE MOSER: Yes. Well, I can't answer any
15 further, really, except in specifics. I think it ought
16 to be made clear that the General Assembly under this
17 provision could pass a law saying we deny the counties the
18 power to make any laws in certain areas, and this might
19 include education. I think that not only in that area
20 would you have a preemption, but you do have constitutional
21 preemptions of county powers. As for example the judicial

1 power is entirely preempted, and there is a limited
2 preemption in the field of the tax powers as to counties.
3 THE PRESIDENT: Delegate Moser, I wonder if I could
4 interject here, because I think I understand at least a part
5 of what Delegate Maurer is getting at.
6 What she was asking you in part, I think, was
7 whether or n ot preemption of a field depends necessarily
8 upon a statement to that effect in the statute, and I take
9 it your earlier answer to that was no; is that correct?
10 DELEGATE MOSER: That is correct, sir.
11 THE PRESIDENT: Would it be fair to state that you
12 would agree with her statement in the question to you
13 that whether or not the field was preempted was not always
14 a matter easy of solution, you had to look at the statute,
15 determine its scope, and then decide whether the scope was
16 so broad as to really completely preempt the field?
17 DELEGATE MOSER: That is a fair statement, sir.
18 THE PRESIDENT: Now, one further thing by way
19 of illustration:
20 If the article on public education provided for
21 state-wide education from the first to the 12th grades, this

1 would not necessarily indicate that a county could not
2 provide more extensive education, either before the first
3 grade, or after the 12th. Is that correct?
4 DELEGATE MOSER: That is correct.
5 THE PRESIDENT: Does that give you a further
6 explanation, Delegate Maurer?
7 DELEGATE MAURER: Yes, sir. Thank you very much.
8 THE PRESID ENT: Any further questions as to
9 section 7.04?
10 Delegate Pullen.
11 I'm sorry. Delegate Macdonald had requested the
12 floor earlier, Delegate Pullen.
13 DELEGATE MACDONALD: Coming back, Delegate
14 Penniman, to the question raised by Delegate Case in regard
15 to the power to tax, I refer you to section 7.07 which
16 deals with powers which may be granted to a municipal
17 corporation, and section 8.01b, and I think you have a copy
18 of that. I passed it up to you.
19 I will ask you whether you could eliminate
20 section 8.01b, and whether it is taken care of in section 7.07
21 or, expressed or otherwise, isn't 8.01b necessary?

1 THE PRESIDENT: Delegate Penniman.

2 DELEGATE PENNIMAN: The last sentence in 8.01b
3 was involved in a good deal of discussion on the floor, and
4 at that time it was stated that it was not intended to be
5 in conflict with the numbers which were then 7.80, and
6 which are now 7.05, 6 and 7, which had already been passed
7 by the Committee of the Whole, and that it was intended
8 to be in line with those provisions which, as I understand
9 it, then meant that this provision 7.01b would apply as
10 stated,allowing differences among the counties, but would
11 not allow differences among the municipal corporations where
12 it would apply by general law.
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1 THE PRESIDENT: Delegate Macdonald.

2 DELEGATE MACDONALD: I don't recall the particular
3 discussion you are referring to in regard to 8.01(b), but
4 as I read 8.01(b), the form in which it was adopted, and
5 I will read it, it says, "The General Assembly may confer or
6 withdraw taxing powers by laws applicable to one or more
7 political subdivisions."

8 I would assume that means one or more munici-
9 palities.

10 DELEGATE PENNIMAN: I can only say what was
11 said on the floor, which was the flat inquiry does this in
12 any way conflict with 7.07, -8 and -9. The answer was no,
13 and in 7.09 -- now 7.07 -- it says "public general law".

14 THE PRESIDENT: Delegate Macdonald, the way you
15 phrased your last question, I don't know whether it was
16 misleading or not, you said you assumed that the second
17 sentence of Section 8.01(b) could only refer to munici-
18 palities. I assume you meant would include municipalities
19 but not limited to municipalities.

20 DELEGATE MACDONALD: Mr. Chairman, what I meant
21 to say was the term "one or more political subdivisions"

1 could of course include municipalities and to me it could
2 mean only that a law of the General Assembly granting powers
3 may include all political subdivisions -- in other words,
4 all municipalities -- or one or more municipalities.
5 In other words, it could be a local law insofar
6 as granting taxing powers is concerned. It seems to me
7 if that is dropped out of the Constitution, and we rely
8 solely on Section 7.07, then we have made a substantive
9 change.
10 Mr. Penniman says that he thinks that was cleared
11 up on the floor. I don't recall that, but maybe Delegate
12 Case will.
13 THE PRESIDENT: I don't know that now is the
14 proper time to discuss it, because you don't have before you
15 the report of the Committee on Style, Drafting and Arrange-
16 ment as to Section 8.01.
17 There is, I take it, no question so far as this
18 particular point is concerned under Section 7.04, is there?
19 DELEGATE MACDONALD: That is correct, Mr.
20 Chairman. I think the situation as far as 7.04 is concerned
21 is all right subject to the mild reservation that it is

1 going to be clarified, I understand.

2 THE PRESIDENT: Let's hold your question, then,

3 until we get to the 7.05 group.

4 Delegate Clagett.

5 DELEGATE CLAGETT: Mr. Chairman, by way of

6 additional answer to the question raised by Delegate

7 Hanson with respect to the necessity of having the two

8 alternative provisions in lines 8 and 9 of 7.04, I suggest

9 that it is necessary to have the two alternative provisions

10 in that in line 8 "transferred exclusively" could be a

11 transfer by the county to a regional government, or could

12 be the transfer by the county to a municipality as provided

13 in Section 7.07.

14 Now, if the transfer is made by the county to a

15 municipality in Section 7.07, it would be by a law of the

16 county, but specifically in 7.07 any transfer to the

17 municipality by the General Assembly would have to be to

18 all municipalities by what would be a general law applicable

19 to all municipalities.

20 THE PRESIDENT: Delegate Pullen.

21 DELEGATE PULLEN: Mr. Chairman, I don't think

1 that either you or Mr. Moser has answered the question
2 that Mrs. Maurer I thought was asking.
3 To what extent, Delegate Moser, under this
4 provision may the county government change the structure,
5 form, or composition of the Board of Education or the
6 establishment of two or three divisions within the present
7 division?
8 THE PRESIDENT: Delegate Moser, can you respond
9 to the inquiry?
10 DELEGATE MOSER: I am not sure that I fully
11 understand the question. If Dr. Pullen is asking another
12 question --
13 THE PRESIDENT: I think he is asking you to
14 what extent if at all may a county, by virtue of Section
15 7.04, change a law enacted by the General Assembly in the
16 field of education. Is that your question, Dr. Pullen?
17 DELEGATE PULLEN: Well, not exactly. What
18 power has it under this constitutional provision to change
19 the structure or composition of the local boards or the
20 establishment of several divisions of education within the
21 present system?

1 THE PRESIDENT: Delegate Moser.

2 DELEGATE MOSER: If the General Assembly acts, or
3 if the transitional provisions continue Article 77 in
4 effect, then that in conjunction with 7.04 would prevent
5 the counties from doing any of the things which you
6 mentioned in your question.

7 Now, if the General Assembly repealed 77 at some
8 subsequent time, then presumably the counties could act
9 under this provision in the same manner as they could act
10 if the General Assembly granted the counties the power to
11 act in the field of education.

12 THE PRESIDENT: Delegate Pullen.

13 DELEGATE PULLEN: Then inherent in this particular
14 provision is the power for the county to assume all of the
15 present responsibilities of the Legislature in respect to
16 local education?

17 THE PRESIDENT: Delegate Moser.

18 DELEGATE MOSER: No, the answer is no, that the
19 power of the General Assembly to control the situation now
20 is just as it was, or just as it is under the present
21 Constitution. The only difference is that this reverses the

1 situation.

2 You could, under the existing constitution, grant
3 the counties -- the counties could be granted by the
4 General Assembly the power to act in these fields, and now
5 the situation is that this power has been withdrawn by
6 existing legislation which will continue.

7 The General Assembly could,however, just as
8 they could now, permit the counties to act in the fields
9 that you mentioned.

10 THE PRESIDENT: Delegate Pullen.

11 DELEGATE PULLEN: The intent of this particular
12 provision is not to turn over to the counties the control
13 of education that is now carried on by the State, is it?
14 Is that possible?

15 THE PRESIDENT: Delegate Moser.

16 DELEGATE MOSER: In answer to your first question
17 the intention is not to turn over the power of education to
18 the counties, there is no question about that.

19 In answer to your second question, is it possible,
20 yes, it is possible under this provision just as it is
21 possible under the existing law.

1 THE PRESIDENT: Delegate Pullen.

2 DELEGATE PULLEN: Thank you. I just wanted to get
3 it on the record.

4 THE PRESIDENT: Delegate Case.

5 DELEGATE CASE: Mr. Chairman, this may not really
6 be the time to ask this question, but following up the
7 point I made earlier, namely that the Commission on State
8 Finance and Taxation felt it was important as a matter of
9 substance to have in the Constitution a section which dealt
10 merely with the right of the counties to receive taxing
11 powers or the right of municipalities to receive taxing
12 powers so that anybody who was interested in this subject
13 could find it indexed and could go right to it, in view of
14 the fact that this has been taken out, or this has been
15 emasculated by your committee and filtered into the local
16 government section, I am wondering whether or not, and
17 I am posing this question to the President of the Convention,
18 whether or not this really isn't a substantive change.

19 THE PRESIDENT: Delegate Case, the change made
20 in 7.04 is not a substantive change, because the Committee
21 on Local Government had in the predecessor of this section

1 substantially the same language as to the power of the
2 county to tax.
3 Your committee, the Committee on State finance,
4 had a similar section both covering the same area. I don't
5 think that the Committee on Style has made here any sub-
6 stantive change. It has made only stylistic changes.
7 One of the matters before it would be the
8 question of arrangement as well as the question of stylistic
9 change within a section, and it would have the authority
10 to recommend to the Convention that either this provision
11 not be included in this section and that reliance be had
12 entirely on a section similar to 8.01(b) or the converse.
13 I take it that the chairman has indicated the
14 intention of the Committee on Style insofar as arrangement
15 is concerned that the converse be followed -- namely, that
16 it be in this section and elsewhere, and not in a separate
17 section. That question would be submitted to the Convention
18 for decision. I suggest to you that the proper time to
19 consider it would be when the report of the Committee on
20 Style, Drafting and Arrangement as to Section 8.01 is
21 before you. In other words, if they recommend at that time

1 the deletion of that section as being covered, this could
2 be opposed and an amendment could put it back.
3 Delegate Case.
4 DELEGATE CASE: Mr. President, the problem I
5 have with that is that if we wait until that time, then
6 we will have already passed on the provisions here involved,
7 and it seems to me that that action would foreclose the
8 decision by the Convention on this point.
9 THE PRESIDENT: No, it would not, because under
10 the rules of the Convention if the Convention took a
11 contrary position on the action of the committee with
12 respect to Section 8.01(b), the whole thing would still be
13 back before the Committee on Style and could be again
14 submitted.
15 The difficulty with considering it now is that you
16 only have part of the problem before you.
17 Delegate Case.
18 DELEGATE CASE: Well, I don't want to prolong
19 this discussion, but I call to your attention two facts.
20 One is that as far as I know neither the Chairman or
21 the Vice Chairman of the Committee on State Finance and

1 Taxation was consulted about this matter.

2 Secondly, the reason why this provision was in the
3 local government section in the first place was because
4 Delegate Raley and I took this matter up with them.
5 I am not going into all of that back history, but it was
6 first, as I recall, sent to the Committee on Finance and
7 Taxation, and then only subsequently did it get over to
8 local government, and then Delegate Raley and I conducted
9 the procedures over there which resulted in having something
10 in this section, but the main thrust of it was covered in the
11 finance section.

12 I think that this certainly goes contrary to what
13 I thought was going to happen.

14 THE PRESIDENT: This may, but again I will give
15 you assurances from the Chair that action at this time
16 with respect to the second sentence of Section 7.04 would
17 not preclude contrary action by the Convention with respect
18 to Section 8.01(b), and if the contrary action were taken
19 by the Convention, then the deletion or such other change
20 as was necessary of the second sentence of 7.04 could be
21 accomplished.

1 Delegate Sherbow.

2 DELEGATE SHERBOW: Mr. Chairman, I approach it
3 from a slightly different point of view. I would assume
4 that if the Committee on Style is removing 8.01(b) that
5 this is not stylistic but is substantive, and if they have
6 reached such a conclusion, I would suggest that at least
7 the chairman of the State Finance Committee be made aware
8 of it, and I would assume that as other committees are
9 going along with their work, as overwhelmed as the Committee
10 on Style is, and I know they are, that when changes such
11 as these are contemplated at least we be made aware of
12 them so that we may proceed to discuss it with the
13 Committee.

14 THE PRESIDENT: Again let me state that the
15 Committee on Style, Drafting and Arrangement has as yet not
16 taken any action with respect to Section 8.01(b), and it is
17 not before you now. They are following the universal
18 practice, and Delegate Penniman can confirm this, of
19 conferring with the chairman and the staff advisor of every
20 committee before they make any report with respect to
21 recommendations of that committee. They have not talked

1 to your committee yet simply because they have not yet
2 considered Section 8.01(b).
3 Is that correct?
4 DELEGATE PENNIMAN: That is correct. I believe
5 the understanding is that if we reach anything dealing
6 with State Finance and Taxation, which I trust will be by
7 Friday afternoon, we have agreed that we would call
8 Delegate Case and we would also call Delegate Lewis and also
9 the chairman of the committee so that any or all of them
10 will be invited to be present at the point when we are
11 discussing the whole matter of Article VIII.
12 THE PRESIDENT: Delegate Case.
13 DELEGATE CASE: The point then is that Delegate
14 Penniman is not saying to us that it has been decided, as
15 I thought he did earlier, that this question of 8.01(b)
16 was out. Remember, this was the first question I asked
17 him, was this section out, and he said yes.
18 THE PRESIDENT: I think you misunderstood him.
19 He said the present thinking of the committee was that
20 that section would probably not be necessary. I don't
21 think he meant to indicate there had been any definite

1 decision, but let's ask him. Chairman Penniman.

2 DELEGATE PENNIMAN: That is exactly correct the

3 way you have stated it. I can see precisely why Delegate

4 Case misunderstood. There has not been a vote. We have

5 discussed it. There has not been a vote in our Committee

6 with respect to this matter, though there may be --

7 THE PRESIDENT: Let me break in to comment here

8 that this is part of the problem of time. It of course

9 would be very nice and the ideal way of doing it if the

10 Committee on Style would not report to the Convention

11 any of its recommendations with respect to any articles

12 until it had reviewed all of them and consulted with all

13 chairmen, but in talking with Cbairman Penniman I have

14 told him that we simply cannot do it, because it would put

15 us too far behind. However, there isn't the slightest

16 doubt that under the rules there will be ample time for

17 reconsideration of any of these matters.

18 Are there any further questions as to Section

19 7.04? Delegate Chabot.

20 DELEGATE CHABOT: A parliamentary inquiry, Mr.

21 Chairman.

THE PRESIDENT: State the inquiry.

DELEGATE CHABOT: Did I understand correctly from some of the comments you had made that if we make any amendments on second reading they go to Style, and Style reports back, so in effect we have sort of a second reading on those amendments?

THE PRESIDENT: That is correct. The rules very clearly indicate that amendments and reconsiderations of any matters before the Convention may be considered at any time before the Convention adjourned sine die.

Are there any other questions?

DELEGATE PENNIMAN: May I, in reference to the question raised by Delegate Macdonald, refer him to page 7,145 of the transcript. The statement is very brief.

THE PRESIDENT: Can we come to that when we come to the section dealing with that?

DELEGATE PENNIMAN: All right, fine.

THE PRESIDENT: Let me, b efore we leave 7.04, ask you a question which is in a general way related to the same questions asked by Delegate Case, but not specifically.

1 troubled by the deletion in line 4 of the words "and
2 power to tax", although I understand the reasons given in
3 the report, but let me ask you a series of questions to
4 make the point that is troubling me.
5 As you would read the first sentence of Section
6 7.04 as amended by your Committee with the deletion of the
7 words "and power to tax", a county would have full power to
8 tax; is this correct, assuming that it was not denied in
9 one of the other ways mentioned in that sentence?
10 DELEGATE PENNIMAN: I suppose that is the way
11 it would read, that is correct.
12 THE PRESIDENT: So in the first sentence you would
13 be saying that the county has the power to tax, assuming one
14 of the exclusions does not apply.
15 DELEGATE PENNIMAN: That would appear to be the
16 case, yes, sir.
17 THE PRESIDENT: And one of those is that the
18 power has not been denied to it by this Constitution, and
19 there would be no place in the Constitution denying the
20 power to tax; is that assumption also true?
21 DELEGATE PENNIMAN: It would seem to be true,

1 yes.

2 THE PRESIDENT: Then if that is true and for-
3 getting for the moment the amendment mentioned by
4 Delegate Moser, then when you come to the second sentence
5 this would be an additional power granted to the county
6 rather than denial of power to tax, would it not?

7 In other words, it is couched in terms of a
8 grant of power rather than a denial of power.

9 DELEGATE PENNIMAN: I suppose without the use
10 of the word "only" that might be so interpreted.

11 THE PRESIDENT: And if you amend the sentence by
12 including the word "only", then don't you end up with
13 having a contradiction between the two sentences, so that
14 you would have to read sentence No. 1 to mean a county
15 may exercise the power subject to the second sentence of
16 this section?

17 DELEGATE PENNIMAN: I can see why you make the
18 argument, yes.

19 THE PRESIDENT: Delegate Moser, were you following
20 the colloquy on the point that was troubling the Chair?

21 DELEGATE MOSER: I was, sir, up to this point.

1 I think it is intended that the amendment
2 constitute a denial.
3 THE PRESIDENT: Yes, I understand it would, but
4 it would do so only by making the second sentence contra-
5 dictory to the first.
6 DELEGATE MOSER: Well, that is another place in the
7 Constitution.
8 THE PRESIDENT: What is?
9 DELEGATE MOSER: That is within the exception
10 in line 6.
11 THE PRESIDENT: Yes, I understand that. I was
12 wondering, and I ask Delegate Case this, too, whether under
13 the circumstances it isn't much cleaner, neater and clearer
14 to leave in the words "and power to tax" and leave out the
15 word "only".
16 Delegate Moser.
17 DELEGATE MOSER: I have no preference at all.
18 It could be done either way. I think Chairman Penniman
19 indicated their reasons for deleting it, but we were
20 adopting the language of the Case amendment, really. It
21 just doesn't make any difference, whichever is clear.

1 THE PRESIDENT: Very well, are there any other
2 questions as to 7.04? Delegate Clagett.
3 DELEGATE CLAGETT: There are two thoughts, one
4 with respect to this power and following along the colloquy
5 of the Chair.
6 The power to tax is not being denied by this
7 Constitution to the counties; it is being restricted insofar
8 as the countires are concerned to those taxing powers
9 granted to them by the General Assembly, and there is a
10 distinction, I believe, embedded there. Therefore it seems
11 that the way in which the Committee has approached it here
12 would be consistent with the exercise of a power given to
13 them by and through the General Assembly.
14 A second comment -- back to the question raised
15 by Delegate Maurer -- with respect to preemption. I think
16 that you can think clearly with respect to this matter of
17 preemption along the line of the counties having the po-er
18 to act only where it is not inconsistent with an act taken
19 by the General Assembly. There is, of course, a clear
20 preemption of the field by the Constitution with respect
21 to the judicial power. Where the General Assembly acts and

1 clearly the act of the General Assembly states that this
2 field is being preempted and only acts by the General
3 Assembly shall prevail is one method of preemption about
4 which there would be no confusion whatsoever.
5 Where the General Assembly does not so clearly
6 state its intent, but by its act itself there is an
7 implication that the county may not act in that field,
8 there would be a second preemption.
9 Then the third would be where the General
10 Assembly acts but leaves an area of leeway. It is in
11 that area where the county can act where the act would not
12 be inconsistent with the General Assembly action.
13 THE PRESIDENT: Delegate Clagett, are you
14 referring in these last statements to the power to act?
15 DELEGATE CLAGETT: No, sir, I was thinking then
16 in terms of the education power as to pre-grade 1, or
17 after grade 12, or in some other area.
18 THE PRESIDENT: What you were saying you did not
19 mean to be applicable to the power to tax.
20 DELEGATE CLAGETT: No, I left that one behind.
21 THE PRESIDENT: Delegate Case.

1 DELEGATE CASE: It was my understanding that
2 is what he was talking about that sprung me out of my chair
3 with such alacrity, but let me say because of this colloquy
4 it seems to me desirable to continue the words "and power
5 to tax", because you get into this kind of an argument if
6 you take it out, and the purpose that we all have, both in
7 the Local Government Committee and the Finance Committee,
8 was to make it absolutely and abundantly clear that the
9 local political subdivisions, counties, and municipalities
10 would only have such powers as granted to them b y the
11 General Assembly.
12 THE PRESIDENT: We will come back to that when we
13 come back to consideration. Delegate Bamberger.
14 DELEGATE BAMBERGER: Mr. Chairman, I would just
15 like to add a few more questions to the colloquy which you
16 had before with Delegate Penniman.
17 It seems to me if you restore the words "and
18 power to tax" to the first sentence that the first sentence
19 then constitutes a denial of the power to tax to the county
20 and would be in even sharper contradiction with the second
21 sentence which confers it at least in a limited way.

1 THE PRESIDENT: Are there any other questions?
2 Delegate Wiedemeyer.
3 DELEGATE WEIDEMEYER: Mr. President, I would
4 imagine that this question would be directed to Delegate
5 Moser or Delegate Sherbow, or Delegate Case. I am a
6 little puzzled, and probably they could enlighten me.
7 Regarding the power to tax or perform any function
8 in line 5, "unless that power or function has been denied to
9 it by this Constitution or by its instrument of government",
10 I am just wondering how that would work out if, for
11 example, in the area of sales tax the General Assembly
12 allowed a sales tax to be enacted by counties to a certain
13 percentage, and the county had in its instrument of local
14 government a prohibition against the county ever levying a
15 sales tax.
16 THE PRESIDENT: Delegate Weidemeyer, I think that
17 is a question of substance rather than style. I will
18 defer to Delegate Moser as Chairman of the Committee on
19 Local Government. Delegate Moser.
20 DELEGATE MOSER: The answer is, I think what you
21 are interested in hearing, they couldn't enact the sales

1 tax, as I understand it. If they were given the power to
2 do it, let's say Anne Arundel County is given the power to
3 enact the sales tax, and Anne Arundel's charter said they
4 couldn't, then they couldn't, because that is a power denied
5 them by their charter. They would have to amend their
6 charter and go through the procedure of getting it amended,
7 which would involve getting the people to vote on it
8 under another section of this Constitution before they
9 could do it.
10 THE PRESIDENT: Delegate Weidemeyer.
11 DELEGATE WEIDEMEYER: If it were the policy of
12 the General Assembly to have that power exercised uniformly
13 by all of the counties, I would think it would create quite
14 a rumpus, because then you would no doubt have a disparity
15 in business trends between one county that had the tax and
16 another county that might not.
17 THE PRESIDENT: Delegate Moser.
18 DELEGATE MOSER: I think that the General
19 Assembly could pass a general law that would override a
20 single county charter.
21 THE PRESIDENT: Are there any further questions

1 as to Section 7.04? The Chair hears none.

2 Section 7.05, Delegate Penniman.

3 DELEGATE PENNIMAN: In Section 7.05, I believe

4 the only changes we made were to bring into it the definition

5 that had been in the original 7.01, and to move slightly,

6 or rearrange slightly some of the clauses in here, or

7 words.

8 THE PRESIDENT: Are there any questions as to

9 7.05? Delegate Chabot.

10 DELEGATE CHABOT: In Section 7.01, the

11 definition starts off with the phrase "In this Constitution",

12 and that phrase preceded, or the equivalent of that phrase

13 preceded all the definitions in the original Section 7.01.

14 Is there any difference intended in Section 7.05

15 because that phrase does not precede the definition? You

16 are still defining it only for purposes of this Constitution;

17 you are not making a definition applicable to statutes, or

18 any other purposes, are you?

19 THE PRESIDENT: Delegate Penniman.

20 DELEGATE PENNIMAN: Well, except to the extent

21 that what is in this Constitution is applicable to the

1 statute, it is for this Constitution.

2 THE PRESIDENT: I think Delegate Chabot's question

3 is in 7.01 you say "In this Constitution 'counties' shall

4 mean...", and so forth, and therefore you mean that

5 wherever that term appears anywhere in the Constitution it

6 shall have that meaning.

7 In 7.05 you don't say "In this Constitution".

8 His question is is this definition of municipal corporation

9 limited to this section or article?

10 DELEGATE PENNIMAN: No, it applies throughout

11 the Constitution. This is the result of having broken up

12 7.01. We put it in the new 7.01 with the intention of

13 making emphasis because of the change of the status of

14 Baltimore City to that of a county. There could be certainly

15 a good case made, given the fact we use is in 7.01, to use

16 it again in 7.05 and again where we define in 7.08 the

17 county governmental unit.

18 THE PRESIDENT: Is there a further question,

19 Delegate Chabot?

20 DELEGATE CHABOT: In view of the fact that the

21 courts have the proper desire to interpret different

1 language differently, especially where they otherwise
2 might have expected parallel construction, I wonder if it
3 would not be advisable to insert this phrase before all
4 of the definitions or before none of them?
5 DELEGATE PENNIMAN: I had indicated, I thought, a
6 very good contention could be made for that.
7 THE PRESIDENT: Delegate Clagett.
8 DELEGATE CLAGETT: Following through with the
9 question, do you not mean, where you say "in this
10 Constitution", you mean by this Constitution Baltimore City
11 as a county along with the other 23, and that carries you
12 through into all of the statutory law where it may be
13 applicable to Baltimore City hereafter?
14 DELEGATE PENNIMAN: That is correct.
15 THE PRESIDENT: Are there any other questions as
16 to Section 7.05? Delegate Bamberger.
17 DELEGATE BAMBERGER: As to the word "existing"
18 on line 48, I ask, because of the possible conflict
19 between 7.05 and 7.07, does that word "existing" on line 48
20 refer to the time when this Constitution becomes effective?
21 DELEGATE PENNIMAN: That is correct.

1 THE PRESIDENT: Are there any other questions
2 as to 7.05? The Chair hears none.
3 7.06, Delegate Penniman.
4 DELEGATE PENNIMAN: In 7.06, as you can see,
5 instead of saying "civil units" we said "other units of
6 local government comprising a part of the area of the
7 county", which was the definition of civil units.
8 THE PRESIDENT: Are there any other questions on
9 7.06? Delegate James.
10 DELEGATE JAMES: Does this section contemplate the
11 power of a county to create a new municipality or to amend
12 their charter even though the General Assembly might not
13 act in any manner? In other words, it is clear that it is
14 subject to the procedural standards, the standares of
15 procedure set up by the General Assembly, but if the
16 General Assembly does not act, then the county government
17 would be free to act in any manner. Is that the proper
18 interpretation?
19 THE PRESIDENT: Delegate Penniman.
20 DELEGATE PENNIMAN: It would be free to act
21 subject to anything that might be done by --

1 THE PRESIDENT: But if the General Assembly
2 had enacted no law, the language used is intended to
3 indicate that the county may nevertheless act?
4 DELEGATE PENNIMAN: That is correct.
5 THE PRESIDENT: Are there any other questions as
6 to 7.06? Delegate Needle.
7 DELEGATE NEEDLE: Mr. Chairman, following along
8 with that same question, I think that the question arose
9 as a result of striking the word "only" in line 10, and
10 I have discussed this with Delegate Penniman before this
11 session.
12 Is it not correct that you have no objection to
13 reinserting the word "only"?
14 DELEGATE PENNIMAN: We have no objection to
15 reinserting. It might involve another minor change in it,
16 because in front of "any" it creates a little problem.
17 THE PRESIDENT: I don't understand, Delegate
18 Needle, that the reinsertion of the word "only" would affect
19 Delegate James' question one way or the other.
20 DELEGATE NEEDLE: Well, I believe by deleting the
21 word "only", it leaves open to some question whether or not

1 the adoption of standards by the General Assembly is manda-
2 tory in order for the counties to act in this area, and by
3 stating that it is "subject only to such procedures and
4 standards that the General Assembly may provide" would
5 indicate that the counties, in the absence of such standards,
6 can act.
7 THE PRESIDENT: I understand that is what you
8 say. I am just suggesting that it doesn't mean that to me.
9 I don't think the addition of the word "only" adds or
10 detracts one way or the other. It may, but it just doesn't
11 to me.
12 Delegate James.
13 DELEGATE JAMES: I think the word "such" is the
14 key word in there. If the word "such" were in there, it
15 might be interpreted as making action by the General
16 Assembly mandatory.
17 THE PRESIDENT: I take it that what is intended -
18 and I am not suggesting that this be the language -- is that
19 it means subject to procedures and standards, if any, which
20 may be prescribed. I think that Delegate Penniman has
21 indicated the opinion that that is what the language does

1 mean.

2 Delegate Moser.

3 DELEGATE MOSER: I only want to state for the
4 record that the Chair's statement, and Chairman Penniman's
5 statement, are precisely what the Local Government
6 Committee intended by the language.

7 THE PRESIDENT: It seems to me that the language
8 is reasonably clear.

9 Delegate Carson.

10 DELEGATE CARSON: Mr. Chairman, we went over this
11 at some length, and you will notice that in Section 7.10
12 at lines 11 and 12 you have a similar usage, "subject to
13 any restrictions provided by law".

14 Also, in the old Section 7.06, "general applica-
15 tion of laws", which will now be transferred to the
16 legislative branch. We also have such language there, and
17 the words that we have used, "subject to any procedures
18 that the General Assembly may provide", are intended very
19 clearly to mean that the General Assembly need not provide
20 any, but if they do then they are prevalent.

21 THE PRESIDENT: Delegate Needle.

1 DELEGATE NEEDLE: A parliamentary inquiry, Mr.
2 Chairman.
3 Is the title to each section subject to
4 amendment by this body, or is that also before the Style
5 Committee for amendment?
6 THE PRESIDENT: Oh, no, it is subject to amend-
7 ment.
8 DELEGATE NEEDLE: I also discussed with Delegate
9 Penniman before this session the deletion of the words
10 "new municipal corporations" from the title of 7.06, and
11 suggest that most of the members of the local government
12 committee would prefer to see those words remain so that
13 the title would read, "New municipal corporations and
14 intra-county governmental units", for the reason that
15 Section 7.05 title is existing --
16 THE PRESIDENT: If an amendment is in order it
17 could be offered at the appropriate time and be discussed
18 at that time.
19 Are there any questions as to 7.06?
20 All right, proceed, then, to 7.07.
21 DELEGATE PENNIMAN: In 7.07, it is simply a

1 matter of removing the word "general" and moving the
2 word "may" from one side to the other.
3 THE PRESIDENT: Are there any questions?
4 Delegate James.
5 DELEGATE JAMES: I would like to inquire concerning
6 whether the power of the county in this situation, by the
7 language "county may by law", or "county by law may grant
8 additional powers to a municipal corporation", is the
9 right of the county to grant additional powers applicable
10 to only those corporations which they may create, or is
11 that applicable to existing corporations at the time the
12 Constitution goes into effect?
13 THE PRESIDENT: That again is a question of
14 substance. The Chair refers it to Delegate Moser, Chairman
15 of the Committee.
16 DELEGATE MOSER: Mr. President, the meaning of
17 the section is that it applies to all municipalities,
18 whether they be existing ones or new ones created by the
19 county.
20 THE PRESIDENT: Are there any further questions
21 as to Section 7.07? The Chair hears none.

1 Section 7.08.

2 Delegate Hanson, do you have a question as to

3 7.07?

4 DELEGATE HANSON: 7.08, Mr. Chairman.

5 THE PRESIDENT: Let Delegate Penniman comment,

6 first.

7 DELEGATE PENNIMAN: This is again, I think,

8 basically only a matter of putting the definition first,

9 and then seeking to merge what seemed a bit repetitive.

10 I think there are no essential changes other than that.

11 THE PRESIDENT: Delegate Hanson.

12 DELEGATE HANSON: Mr. President, my question

13 relates to the language, "the General Assembly may provide

14 by law for the establishment, merger or dissolution of

15 multi-county governmental units, or for the alteration of

16 their boundaries, or for the powers they exercise."

17 Now, Delegate Penniman, does this term as it is

18 used here mean what it seems to mean to me, that this would

19 be general law applicable statewide and would apply

20 essentially then to the procedures by which these organizations

21 would be established, or does it mean what seems to be said

1 on page 3 of your report, that the General Assembly is
2 granted authority by the Constitution to enact such laws
3 as those pertaining to multi-county governmental units which
4 may or may not be general laws?
5 DELEGATE PENNIMAN: May or may not ge general
6 laws.
7 THE PRESIDENT: Delegate Hanson.
8 DELEGATE HANSON: The language is the same,
9 though, as that which you use when you mean "may only be
10 general laws", I take it.
11 DELEGATE PENNIMAN: That is right, but what
12 happens is that this is in one of the exceptions. I
13 failed to mention it as I went by it, as requested by
14 Delegate Bamberger, but this is one of those which is
15 listed as one of the exceptions. I am sorry I failed to
16 mention it.
17 THE PRESIDENT: Are there any other questions
18 as to 7.08? Delegate Willoner.
19 DELEGATE WILLONER: This language pertaining
20 to a popularly elected regional government, that is
21 added language, isn't it, "pertaining to"?

1 DELEGATE PENNIMAN: Excuse me. Where?

2 DELEGAGE WILLONER: On line 39.

3 THE PRESIDENT: It comes from the deleted language

4 on line 36.

5 DELEGATE PENNIMAN: That is correct, and it

6 applies only to popularly -- this question of referenda,

7 any law pertaining to a popularly elected representative

8 regional government, so that it excludes from it any inter-

9 governmental authority.

10 THE PRESIDENT: Delegate Willoner.

11 DELEGATE WILLONER: This is your word "pertaining",

12 is that correct?

13 DELEGATE PENNIMAN: That is correct. In fact,

14 it was the suggestion of Chairman Moser.

15 THE PRESIDENT: Delegate Willoner.

16 DELEGATE WILLONER: Maybe this question should

17 be directed to Chairman Moser. "Pertaining" is much

18 broader -- I am no expert, I wish Mr. Case was on the

19 floor. I thought regarding the establishment of these

20 representative governments "pertaining to" would seem to me

21 to apply to every decision or every law that was made

1 regarding the regional government and would have to be
2 subject to referendum.
3 THE PRESIDENT. Delegate Moser, can you answer
4 the question.
5 DELEGATE MOSER: You may be right that it would
6 be an extremely broad word. That it is intended to include
7 are the words which have been stricken out by the
8 Committee on Style, which is "establishing, affecting the
9 powers of, or dissolving, or the creation or alteration
10 of their boundaries".
11 I suppose there could be other laws than those
12 which would be included within the word "pertaining", but
13 those words are pretty broad.
14 THE PRESIDENT: Delegate Willoner.
15 DELEGATE WILLONER: It would seem to me that es-
16 tablishing, affecting the powers of or dissolving" are
17 fundamental organizational language. At least that is the
18 concept we had at that time. "Pertaining to", it would
19 seem to me, would cover any law. It just seems to be
20 that way. Maybe I am wrong.
21 DELEGATE PENNIMAN: Delegate Willoner, if I may

1 comment, lost in transition somewhere were the words "on
2 any of these laws" -- that is, "these laws" in the
3 immediately preceding sentence, "pertaining to popularly
4 elected representative regional governments". If one
5 says "any of these", I believe it takes care of the
6 problem.
7 As I say, these were lost in transition.
8 THE PRESIDENT: I am lost myself right now,
9 Delegate Penniman.
10 Where are the words that you speak of?
11 DELEGATE PENNIMAN: They were in the draft just
12 b efore this one was printed, and somewhere in our proofing
13 system we lost them.
14 THE PRESIDENT: To answer Delegate Willoner's
15 question, and I am not sure I understood Delegate Moser,
16 his direct question is that the use of the word "pertaining"
17 in line 39, instead of the words "establishing, affecting
18 the powers of, or dissolving: would appear to be a change
19 in substance because a law pertaining to a representative
20 regional government might be a law other than one
21 establishing, affecting the powers of, or dissolving, and

1 I am not sure what Chairman Moser's answer to that
2 question was.
3 Delegate Moser.
4 DELEGATE MOSER: My answer, Mr. President, was
5 that I take responsibility for the use of the word
6 "pertaining". I do think, however, that the use of the
7 word "pertaining" is incorrect, and that Delegate Willoner
8 is right. I would think it would be better to go back to
9 the original language which is in lines 39 through 42 on
10 that page and specify exactly what we are talking about.
11 The problem arose originally because Style,
12 Drafting and Arrangement had made some other changes further
13 up in that paragraph, and we were just trying to get back
14 to the original meaning of it. I think that Delegate
15 Willoner is right.
16 THE PRESIDENT: Very well, an amendment can be
17 proposed at the proper time.
18 Delegate Carson.
19 DELEGATE CARSON: I was partially but not entirely
20 responsible for changing this section around, and I think
21 the word "pertaining" would certainly include only those

1 things formerly stated. Certainly that is all that is
2 intended. I can't conceive of anything else you could do
3 to a multi-county regional government other than those
4 things that are stated. I don't think the amendment is
5 necessary.
6 THE PRESIDENT: Well, this is not the time to
7 discuss that. We will discuss that if and when the amend-
8 ment is offered.
9 Delegate Sollins.
10 DELEGATE SOLLINS: I have two styled draft
11 reports. One uses the words "pertaining to" and the other
12 refers to "any of these laws" and does not use the word
13 "pertaining". Which is the draft we should have before
14 us?
15 THE PRESIDENT: I didn't understand there was
16 ever two reports. You have two of these tan-colored
17 reports?
18 DELEGATE SOLLINS: Yes, sir.
19 THE PRESIDENT: Oh, no!
20 DELEGATE PENNIMAN: The one I am speaking from is
21 the one that says "pertaining to a popularly elected

1 representative regional government".

2 THE PRESIDENT: Delegate Sollins.

3 DELEGATE SOLLINS: Shall we discard the ones

4 that provide "any of these laws" and don't use the word

5 "pertaining"?

6 DELEGATE PENNIMAN: It should be, because it is

7 not clear by that that it is a popularly elected representa-

8 tive regional government.

9 THE PRESIDENT: How many delegates have a page 4

10 that does not use the word "pertaining" in line 39? The

11 Chair was not aware that page had been reprinted.

12 Will you please turn in to the pages instantly

13 that copy, and will the pages please collect those copies.

14 Please look at your copy and if on page 4, line 39, it

15 does not have the word "pertaining", hold it up so the

16 page can collect it.

17 Does everyone now have the correct draft?

18 Are there any other questions as to Section 7.08?

19 Delegate Pascal.

20

21

1 DELEGATE PASCAL: Delegate Penniman, on
2 line 29, actually 28, to qualify "regional government"
3 can the General Assembly appoint an existing member of
4 the General Assembly to act on a regional government board
5 or would he have to run for a special election?
6 DELEGATE PENNIMAN: Insofar as we are
7 dealing with popularly elected representative regional
8 government, the presumption from the discussion on
9 the floor earlier by the Chairman of the Committee
10 on Local Government was that it had to be elected separately
11 for that purpose -- in other words, it could not be --
12 and this is really a substantive question -- it could
13 not be someone who was elected to the city council or
14 county council and was appointed to that or took it
15 as a result of his membership on the county council.
16 It meant elected to that regional government.
17 DELEGATE PASCAL: In a special election?
18 DELEGATE PENNIMAN: Some kind of an election,
19 that is correct.
20 THE PRESIDENT: Are there any questions on
21 Section 7.08?

1 (There was no response.)

2 THE PRESIDENT: The Chair hears no response.

3 Section 7.09.

4 DELEGATE PENNIMAN: We simply inserted or

5 changed the position of "by law", and otherwise left

6 it virtually unchanged, except to refer to "an inter-

7 governmental authority" rather than "authorities",

8 which allows for more than one, simply as a matter of

9 style.

10 THE PRESIDENT: Delegate Hardwicke.

11 DELEGATE HARDWICKE: Mr. President, may I

12 revert to 7.08 for just a moment?

13 THE PRESIDENT: Yes.

14 DELGATE HARDWICKE: This is a question of

15 substance for Delegate Moser, if I may.

16 THE PRESIDENT: Delegate Moser, would you take

17 the floor to respond to a question, please?

18 Delegate Hardwicke.

19 DELEGATE HARDWICKE: In the last sentence

20 of 7.08, Delegate Moser, does the plural "referenda"

21 indcate that there will be a general law providing for

all such referenda, or is it intended that there should

1 be a provision with regard to a referendum on each law as
2 each law is passed?
3 THE PRESIDENT: Delegate Moser.
4 DELEGATE MOSER: It is intended that the
5 General Assembly may provide by law, general or otherwise.
6 That is, in each case they will act individually.
7 The plural "referenda" is used because they might, for
8 a given law, provide for a referendum in each county,
9 which is why the plural is used rather than the singular,
10 because it might be more than one referendum.
11 THE PRESIDENT: Delegate Hardwicke.
12 DELEGATE HARDWICKE: In other words, it is
13 not contemplated that there will be a law establishing
14 a procedure generally, but it is contemplated that the
15 law, that the referendum provision will be tacked or on not
16 tacked on to each law as it comes through the legislature.
17 THE PRESIDENT: Delegate Moser.
18 DELEGATE MOSER: Absolutely, and I think
19 I explained when this article was discussed at first reading
20 the reason for the need for this.
21 THE PRESIDENT: Are there any other questions

1 on 7.08?

2 Delegate Needle.

3 DELEGATE NEEDLE: On 7.09.

4 THE PRESIDENT: Are there any questions on 7.09?

5 DELEGATE NEEDLE: Delegate Penniman, you

6 mentioned briefly that by changing the word "authorities"

7 from the plural to the singular did not mean that you

8 intended to restrict the General Assembly from granting

9 the power to collect taxes to only a single authority

10 but it could be granted to one or more but not necessarily

11 all authorities in any particular area, is that correct?

12 DELEGATE PENNIMAN:: That is correct.

13 THE PRESIDENT: Are there any other questions

14 on 7.09? If not, proceed to 7.10.

15 DELEGATE PENNIMAN: There are virtually no

16 changes there, as you can see. We got rid of the word

17 "such" before "any", and we used "shall" although in this

18 situation it seemed to us either "may" or "shall" was

19 correct, and we changed "loaned" to "lent" as "loaned"

20 is not preferred as a verb.

21 THE PRESIDENT: Are there any questions on

1 Section 7.10?

2 DELEGATE BAMBERBER: On line 12, does "by
3 law" mean by act of the General Assembly or act of any
4 legislative body of any governing body?

5 DELEGATE PENNIMAN: I think it means any
6 governing body within the state.

7 THE PRESIDENT: Are there any other questions?
8 The unnumbered section on line 25.

9 DELEGATE PENNIMAN: In the unnumbered
10 section on line 25, the use of the words "any law" was to
11 really call attention to what perhaps just "by law"
12 would have done, but in any case to make clear that it
13 was any law within the state but also any federal law.

14 THE PRESIDENT: Any questions?
15 Delegate Willoner.

16 DELEGATE WILLONER: I have a substantive
17 question about 7.10 that may be out of order, but I
18 have a great deal of difficulty with the first sentence of
19 Section 7.10.

20 THE PRESIDENT: Delegate Moser, will you take
21 the floor to yield to a question on Section 7.10?

1 DELEGATE MOSER: Yes, sir.

2 THE PRESIDENT: Delegate Willoner.

3 DELEGATE WILLONER: What is that first
4 sentence supposed to mean now that we have put the "shall"
5 in there?

6 DELEGATE MOSER: Let me read it again.

7 The "shall" is put in to indicate that it is
8 mandatory that they not except in the circumstances given.
9 I guess that is really what your question is. "May not"
10 was intended to mean that they can't do it except in the
11 manner indicated, and Style and Drafting thought it would
12 be better, I take it, to put "shall" in rather than
13 "may".

14 THE PRESIDENT: Delegate Willoner.

15 DELEGATE WILLONER: As I understand this
16 provision, and there may be some doubt whether I under-
17 stand it, they can lend their credit under certain
18 restrictions, is that correct?

19 DELEGATE MOSER: That is correct.

20 THE PRESIDENT: Delegate Willoner?

21 DELEGATE WILLONER: That is all.

1 THE PRESIDENT: Delegate Bamberger.

2 DELEGATE BAMBERGER: Mr. Chairman, or I
3 guess this is addressed to Chairman Moser, was it the
4 intention of the Committee to omit mention of a gift of
5 assets from the last part of the second sentence of 7.10?
6 As I read that, in order to give or lend the credit or to
7 lend assets there must be the consent of three-fifths
8 of the governing body, but that same restriction does
9 not apply to a gift of assets.

10 Was that intentional?

11 THE PRESIDENT: Delegate Moser.

12 DELEGATE MOSER: Absolutely. It is
13 explained in some detail on page 33 of the Committee
14 Recommendation LG-1, the reasons for it.

15 THE PRESIDENT: Any further questions on
16 Section 7.10?

17 Delegate Adkins.

18 DELEGATE ADKINS: I suspect I should have asked
19 this on first reading, but I am confused as to what the
20 intent is of the first clause in 7.10, the "subject to any
21 restrictions" -- subject to any restrictions something

1 shall not be done.

2 What would the restrictions be that would be a
3 restriction on not doing something? Does that mean
4 that you can impose restrictions on the negative so that
5 there could be restrictions under which a loan of credit
6 could be made and, if so, does that have to be for a
7 public purpose? I don't read it that way, but I wonder if
8 the Committee Chairman could help me out.

9 DELEGATE MOSER: The history of this
10 provision si that our Committee started off with essentially
11 if not exactly the same language as the Commission draft
12 recommended for this provision. State finance and
13 taxation changed a similar provision relating to state
14 indebtedness. We then sought to conform the language
15 which we had here to the general language which they used,
16 and this is why we had to put in "subject to". I am
17 getting ahead of my story.

18 The manner in which it was phrased when it came
19 out of state finance was different because it was in the
20 nature, if I recall this correctly, of a grant. It did
21 not make clear, as the Commission draft did, that

1 other restrictions could be imposed by the General
2 Assembly, and therefore we added language making clear,
3 I thought, that the General Assembly could impose
4 restrictions on this in addition to these here or that
5 the instrument of government of the locality also might,
6 or that the locality might by its own law.
7 THE PRESIDENT: Delegate Adkins.
8 DELEGATE ADKINS: Do I understand then the
9 restrictions to which you refer are the restrictions to
10 a loan or a gift for a public purpose? Would your
11 sentence not be clearer if you simply eliminated the first
12 subjective clause, eliminate the words "subject to any
13 restrictions provided by law"?
14 THE PRESIDENT: Let me break in, if I may.
15 Is it the intent of the Committee that the
16 sentence means as though it read "The assets or credit of
17 a unit of local government shall not be given or lent to
18 any individual, association or corporation unless a public
19 purpose will be served thereby and then only subject to
20 any restrictions povided by law"?
21 I am not suggesting that that ought to be the

1 way it should be expressed, but is that the intent,
2 Delegate Moser?
3 DELEGATE MOSER: That is the intent with
4 respect to the first sentence, and of course there is
5 another restriction in lines 16 to 21, but that is the
6 intention of the first sentence.
7 THE PRESIDENT: Delegate Adkins.
8 DELEGATE ADKINS: I would only say if that is
9 the intent it seems to me that it ought to be phrased as
10 the Chair suggests, because putting this in the beginning
11 looks to me like the restriction could be a restriction
12 on the imposition of the negative which would in essence
13 be affirmation of the affirmative and I think might raise
14 some question.
15 THE PRESIDENT: Delegate Moser.
16 DELEGATE MOSER: It is not so intended, of
17 course.
18 THE PRESIDENT: Delegate Case.
19 DELEGATE CASE: To set the record straight,
20 state finance and taxation made no change in the
21 sentence dealing with this subject which had been written

1 at the commission level except that it broke it up into
2 two sentences. There was no substantive change, so I think
3 I would have to correct the record on that point, because
4 I think Delegate Moser said to the contrary.
5 Now, the second point is that at the commission
6 level Section 7.13 dealt with this subject and did not
7 contain the troublesome language that Delegate Adkins
8 has pointed to, and this was something that was brought
9 about entirely by the local government section, and I must
10 say, I must confess, I don't know what reason it has in
11 here. It ought to come out, in my opinion.
12 THE PRESIDENT: Is there any comment, Delegate
13 Moser?
14 DELEGATE MOSER: No, I think Delegate Case
15 probably isn't familiar with the facts. I didn't say
16 that there was any substantive change. I said that the
17 language was changed, and what it did was it changed the
18 tenses, and this is what gave us difficulty. I think
19 you will see, if you look at 6.02 in the commission draft,
20 I think it differs from what ultimately came out of the
21 state finance and taxation committee, but all I was

1 doing was taking Walter Lewis' redraft and our committee
2 then dressed it up.
3 I don't have any feelings about the way it should
4 be expressed because all we were trying to do was comply
5 with another committee's changes so that it would read
6 the same, and it was intended to mean the same.
7 THE PRESIDENT: Delegate Weidemeyer?
8 DELEGATE WEIDEMEYER: I would like to ask
9 Delegate Moser this question.
10 Am I correct in my assumption that the words
11 "any restrictions" in line 11 could well apply to the
12 terms of a loan or the definition of a public purpose for
13 which the loan was being made?
14 THE PRESIDENT: Delegate Moser?
15 DELEGATE MOSER: I am not completely sure I
16 understand what you said.
17 THE PRESIDENT: Delegate Weidemeyer, would you
18 state the question again?
19 DELEGATE WEIDEMEYER: I wanted to know if I
20 were correct in my assumption that the words "any
21 restrictions" in line 11 would apply equally to restrictions

1 governing the terms of the loan and also would govern the
2 definition of "public purpose" in line 15 and in 17.
3 THE PRESIDENT: Delegate Moser.
4 DELEGATE MOSER: Yes as to the first part
5 of the question. As to the second part, I think that
6 "public purpose" would have the meaning a court might
7 give it, but obviously they would take into account a
8 legislative determination that a certain loan was for a
9 public purpose.
10 THE PRESIDENT: Delegate Sherbow.
11 DELEGATE SHERBOW: I wish that you would
12 read along in 7.10 as I read you Section 6.02, and I think
13 you can see what Delegate Adkins points up does become
14 a problem.
15 6.02 simply reads -- and this, of course,
16 applies to the state -- "The assets or credit of the
17 state shall not in any manner be given or loaned to any
18 individual, association or corporation unless a public
19 purpose will be served thereby and unless authorized by
20 an act of the General Assembly stating the public purpose",
21 and then it goes on to speak of gifts of assets which may

1 be by affirmative vote, or gift of credit or loan of
2 credit which requires three-fifths.
3 Now, I am not great on word surgery, but I
4 can understand Delegate Adkins' query as to why "subject
5 to any restrictions proposed by law" does not confuse
6 what follows and create what could be construed as a double
7 negative.
8 In 6.02 we simply start out with the affirmative
9 statement "The assets or credit shall not in any manner
10 be given or loaned except for public purpose and except
11 when authorized by the General Assembly."
12 THE PRESIDENT : Delegate Case.
13 DELEGATE CASE: There is no question that Judge
14 Sherbow is right about that, Delegate Moser, and it is
15 word for word from the Commission report except breaking
16 it up into two sentences, and I suggest to you that maybe
17 it is you who ought to look at the facts.
18 THE PRESIDENT: Delegate Moser.
19 DELEGATE MOSER: I really don't want to
20 prolong this, but what we did was we took a draft that
21 Walter Lewis sent over to us and we had to put in "subject

1 to further restrictions" because of changes that had been
2 made in that particular section when it got to us. I was
3 just checking this. I think what you say is correct.
4 We broke it down into two sentences, but this double
5 negative problem --
6 THE PRESIDENT: The question comes now,
7 regardless of what has gone before, whether the opening
8 phrase of Section 7.10 should or should not be deleted.
9 Delegate Moser.
10 DELEGATE MOSER: I think probably that it
11 should continue in there, but --
12 THE PRESIDENT: Would you give some thought to it,
13 and we will come back to it as we consider it section by
14 section.
15 DELEGATE MOSER: Fine.
16 THE PRESIDENT: Are there any further questions
17 as to Section 7.10?
18 Delegate Grant.
19 DELEGATE GRANT: I was just going to add the
20 reason it is in there, because I worked with the sub-
21 committee that did this, was because there is additional

1 restrictions imposed besides an act of the General Assembly.
2 You would have an act of the instrument of government, you
3 would have an act of the particular law within a county
4 which would set up this unit of government. It applies
5 down to the very smallest unit of government and there-
6 fore there has to be or can be other restrictions than
7 the restrictions imposed by the General Assembly, which
8 of course would be the only restrictions applicable to a
9 state transaction of this same nature.
10 THE PRESIDENT: Are there any further questions
11 or comments?
12 Delegate Hardwicke.
13 DELEGATE HARDWICKE: This is a question of
14 Delegate Moser, Mr. Chairman.
15 THE PRESIDENT: You may proceed.
16 DELEGATE HARDWICKE: Delegate Moser, regardless
17 of the questionthat is being argued now concerning the
18 clause "subject to restrictions", etc., is it the intent
19 that this is a grant of power? Is this a grant?
20 THE PRESIDENT: Delegate Moser.
21 DELEGATE MOSER: No, it is a restriction --

1 it is a limitation, as the title indicates.

2 THE PRESIDENT: Delegate Hardwicke.

3 DELEGATE HARDWICKE: In other words, it is your

4 opinion that if you did not have 7.10 there would be an

5 unlimited power to lend the credit of the unit?

6 THE PRESIDENT: Delegate Moser.

7 DELEGATE MOSER: Subject to whatever

8 restrictions the General Assembly might put on this power.

9 THE PRESIDENT: Delegate Hardwicke.

10 DELEGATE HARDWICKE: Then if you did not have

11 the first clause, the General Assembly could put these

12 restrictions on anyway?

13 THE PRESIDENT: Delegate Moser.

14 DELEGATE MOSER: I think that they could, but

15 the problem is that it looks like a grant of power

16 rather than a restriction the way it came over from

17 state finance and taxation and we want to make clear

18 that it is a restriction, it is not a grant of power, and

19 that the General Assembly or the unit itself may impose

20 other restrictions, and that is the only purpose of the

21 first word.

1 THE PRESIDENT: Delegate Hardwicke.

2 DELEGATE HARDWICKE: Then, Delegate Moser,
3 it is your intention that there may be three restrictions
4 upon what otherwise would be an unlimited power -- that is,
5 restrictions provided by law would be number one;
6 number two, the public purpose; number three, the three-
7 fifths vote.

8 THE PRESIDENT: Delegate Moser.

9 DELEGATE MOSER: Well, in a general way,
10 yes, but that doesn't indicate what this section does.
11 It doesn't require the three-fifths vote, for instance,
12 where there is a gift of assets.

13 DELEGATE HARDWICKE: I understand.

14 THE PRESIDENT: I think I understood the result
15 of that colloquy, but to make absolutely certain may I ask
16 you one other question, Delegate Moser.

17 Is it intended under Section 7.10 and the
18 other sections of this article that the General Assembly
19 may by law restrict in any manner it chooses the power
20 of a county to make a gift or loan of assets or credits,
21 even to forbidding it entirely?

1 DELEGATE MOSER: That is correct.

2 THE PRESIDENT: Very well.

3 Are there any further questions as to Section

4 7.10?

5 Delegate Beatrice Miller.

6 DELEGATE BEATRICE MILLER: I have a question

7 about what the Chair just said and what Delegate Moser

8 just agreed to. Whether it is grammatical or not, I thought

9 that "subject to any other restrictions provided by law",

10 since Delegate Penniman previously said that could be any

11 law, state or local law, was any law of the local government

12 or the law of the General Assembly, and as Delegate Moser

13 agreed to it, it would not include such a local restriction,

14 is that right?

15 THE PRESIDENT: I am sorry, I thought your

16 question was directed to Delegate Penniman.

17 Would you state it again?

18 DELEGATE BEATRICE MILLER: Delegate Penniman

19 had previously stated to a question that "by law" on line

20 12 meant by law of a state or local government.

21 THE PRESIDENT; That is true.

1 DELEGATE BEATRICE MILLER: Therefore, I con-
2 cluded that "subject to any restrictions" could be the
3 restriction of a local government as well as a restriction
4 of the General Assembly.
5 THE PRESIDENT: That is true.
6 DELEGATE BEATRICE MILLER: As you stated it
7 and as Chairman Moser agreed to your statement, would
8 this still include the restriction of a local government?
9 THE PRESIDENT: It would. I was just pointing
10 my question to him at the specific illustration of a law
11 enacted by the General Assembly.
12 Any further questions?
13 (There was no response.)
14 THE PRESIDENT: The Chair hears none.
15 Are there any questions as to the unnumbered
16 section beginning on line 25?
17 (There was no response.)
18 THE PRESIDENT: The Chair hears none.
19 I think because it is imperative that we
20 conclude consideration of all items in the Committee of
21 the Whole, and I understand that Delegate Boyer is now

1 ready to present the matter still remaining for consideration
2 by the Committee of the Whole, that we should suspend
3 further discussion of this recommendation at this time.
4 For what purpose does Delegate Rybczynski rise?
5 DELEGATE RYBCZYNSKI: I wanted to back up to
6 7.02 for just a moment.
7 THE PRESIDENT: Delegate Penniman.
8 State your question.
9 DELEGATE RYBCZYNSKI: If you would look at
10 7.02, the last sentence beginning on line 31, would
11 you consider this a substantive law sentence?
12 DELEGATE PENNIMAN: Which?
13 DELEGATE RYBCZYNSKI: Page 2, line 31.
14 DELEGATE PENNIMAN: I don't have anything
15 there. It has been removed.
16 DELEGATE RYBCZYNSKI: Would you read it through
17 the hyphen marks?
18 DELEGATE PENNIMAN: All this has been put
19 into --
20 DELEGATE RYBCZYNSKI: That is why I am asking
21 about it.

1 THE PRESIDENT: I am not sure I understand
2 your question, Delegate Rybczynski. Would you state it
3 again?
4 DELEGATE RYBCZYNSKI: I am wondering if the
5 sentence starting on line 31 with the word "other" is
6 a sentence containing substantive law.
7 THE PRESIDENT: I don't think there is any
8 question about it.
9 DELEGATE RYBCZYNSKI: All right, sir.
10 My next question then is addressed to the
11 Chair. I am a little bit bothered by the fact that
12 there has been an explanation that this sentence together
13 with some other sentences are being referred to a committee
14 which I believe has not yet been confirmed or established
15 by the Convention, and I am wondering if we are putting
16 some of our work in jeopardy by doing this -- that is,
17 referring matters to a committee not authorized by
18 Rule 23 and subject to the same provisions, namely Rules
19 18 to 22 -- I am sorry, not 22. At any rate, the other
20 rules governing the actions of the various committees,
21 and I was about to suggest that this now being the case

1 where matters of substance are going to this committee
2 whether or not it would not be proper to introduce this
3 matter to the floor so that whatever will be done by the
4 committee will be binding.
5 THE PRESIDENT: I am not sure I understand
6 your question, but let me clear up an apparent mis-
7 conception as to what is being done with respect to the
8 preparation of the schedule of transitional provisions.
9 There is not a committee to which this has
10 been formally referred in the sense provided by the
11 rules. There is an informal or ad hoc committee
12 trying to put together a schedule of transitional
13 provisions. This is being done largely by the drafting
14 team and staff working in cooperation with the chairman
15 and staff advisor and a few other members in some instances
16 of each of the committees concerned.
17 When the schedule has been completed, it will
18 be reported to the Convention by one of the standing
19 committees or maybe all of the standing committees of
20 the convention. It will go through the same procedure
21 as any other committee recommendation. It will go to the

1 Committee of the Whole, be discussed in the Committee of
2 the Whole, and so forth. It will be subjected to the same
3 scrutiny by the Convention, and the same procedure.
4 Is there a further question? Delegate Sybert.
5 DELEGATE SYBERT: Mr. Chairman, I would like to
6 have something cleared up with respect to Section 7.07.
7 It seems to me that 7.07 says that the General Assembly or
8 the county may grant additional powers to a municipal
9 corporation, and the granting authority -- I take it that
10 means a granting authority -- only may withdraw such
11 powers.
12 Does that mean that if a certain power is
13 granted by a county to a municipality that the General
14 Assembly may never withdraw their powers?
15 THE PRESIDENT: That is a question of substance.
16 I would refer it to Delegate Moser.
17 Delegate Moser, did you hear the question?
18 DELEGATE MOSER: I did not, Mr. President, I
19 am sorry.
20 THE PRESIDENT: The question is asked whether
21 under Section 7.07, which provides that the General

1 Assembly or a county may grant additional powers to
2 municipal corporations and authorizes the withdrawal of
3 the powers by the granting authority, whether this would
4 prec lude the General Assembly, by law, from withdrawing
5 powers granted to a municipal corporation by a county.
6 DELEGATE MOSER: The answer is no, the ultimate
7 answer, because the General Assembly, by general law,
8 could control the powers which counties might grant to
9 municipalities. What it means is that it is intended to
10 permit counties to grant to municipalities individually,
11 within their boundaries and on a case by case basis,
12 additional powers they might need which the General
13 Assembly had not granted to all municipalities.
14 THE PRESIDENT: Delegate Sybert.
15 DELEGATE SYBERT: Mr. Chairman, doesn't this
16 wording indicate once the power has been given by a
17 county to the municipality that it is forever locked --
18 that power is forever locked in the municipality unless
19 the county itself withdraws it, because once a power is
20 granted, this permits only the granting power to withdraw
21 it?
Now, let me put an extreme case. Under Section 7.04 the

1 county will have the right to delegate, under the shared
2 powers doctrine, the right to grant any power that the
3 county has unless maybe it has been withdrawn by the
4 General Assembly.
5 Suppose the General Assembly has not withdrawn
6 from a county the right to license bookies and the county
7 in turn delegates that power to a municipality. Later the
8 municipality withdraws that right from the county, but
9 cannot the municipality continue to exercise that right
10 because it only, under this wording in 7.07, may withdraw
11 it?
12 THE PRESIDENT: Delegate Moser.
13 DELEGATE MOSER: The answer to the question,
14 which I think was the very first one you asked, is no,
15 it is not intended to preclude the General Assembly from
16 withdrawing any power such as this, and it doesn't mean
17 that. I don't think it reads that way, sir. It says,
18 "The granting authority may withdraw such powers." It
19 doesn't say that the General Assembly can't, if the county
20 grants the powers. It is not intended to mean that.
21 The General Assembly, however, would have to act

1 by a public general law in this respect, and it could
2 deny the power to license bookies, if that is the
3 example. It could permit this, or it could prohibit this
4 generally to all municipalities.
5 THE PRESIDENT: Delegate Sybert.
6 DELEGATE SYBERT: You don't feel the wording of
7 Section 7.07 needs to be clarified?
8 THE PRESIDENT: Delegate Moser.
9 DELEGATE MOSER: It certainly is not intended to
10 have the meaning that you indicated it might have, Judge.
11 If there is anything that could be done with it to clarify
12 this, I would be happy to review it, but I think that it is
13 really a limited grant of power, and by other provisions
14 the General Assembly can act with respect to all municipal
15 corporations.
16 THE PRESIDENT: Delegate Moser, I think Delegate
17 Sybert has a point, if I understand one further intend of
18 this section, and I will ask you that question.
19 I take it it is not intended by this section
20 to authorize a county to withdraw from a municipal
21 corporation a power granted by the General Assembly, is it?

1 DELEGATE MOSER: It is not.

2 THE PRESIDENT: If not, then I think Delegate
3 Sybert's point has some force, and I would ask you, before
4 we resume consideration, to give some thought to perhaps
5 the amplification of the last clause.

6 I take it that what is intended by the clause
7 is that the county may withdraw any power granted by the
8 county and the General Assembly may withdraw any power
9 granted by the General Assembly or by the county. Is that
10 the intent?

11 DELEGATE MOSER: It is the intent, but not to do
12 it by this section. The General Assembly could do this by
13 public general law without that.

14 THE PRESIDENT: I only suggest that you give
15 consideration to the point mentioned by Delegate Sybert
16 before we come back to this Section. Delegate Clagett.

17 DELEGATE CLAGETT: Mr. Chairman, if a power is
18 granted by the county to a municipality, the General
19 Assembly can only withdraw such a power by withdrawing that
20 power from all municipalities.

21 THE PRESIDENT: I understood that.

1 I think we should resume consideration of the
2 other item on the agenda, and the Chair therefore
3 recognizes Delegate Powers.
4 DELEGATE POWERS: Mr. President, I move the
5 Convention resolve itself into the Committee of the Whole
6 so that we may consider the general order of the day.
7 THE PRESIDENT: Is there a second?
8 (The motion was duly seconded.)
9 THE PRESIDENT: All in favor signify by saying
10 aye, contrary no. The ayes have it; it is so ordered.
11 (Whereupon, at 4:10 p.m., the Convention
12 resolved itself into the Committee of the Whole.)
13 (The mace was removed by the Sergeant at
14 arms.)
15 THE CHAIRMAN: The Committee of the Whole will
16 please come to order. The clerk will ring the quorum bell,
17 please.
18 The Committee of the Whole will now resume
19 consideration of Committee Recommendation No. GP-5. You
20 will recall this matter was under consideration several
21 days ago. Further consideration was deferred to enable the

1 Committee to prepare a further recommendation.

2 The Chair recognizes Delegate Boyer, Chairman

3 of the Committee.

4 For what purpose does Delegate Lord rise?

5 DELEGATE LORD: Personal privilege, Mr.

6 Chairman.

7 THE CHAIRMAN: State the privilege.

8 DELEGATE LORD: I would like the Convention to

9 welcome in the front balcony two members of my family, my

10 father, Delegate Charles Lord, Delegate to the General

11 Assembly of Maryland from 1938 to 1942, and my brother,

12 Captain Charles V. Lord, United States Marine Corps.

13 (Applause.)

14 THE CHAIRMAN: Delegate Boyer.

15 DELEGATE BOYER: Mr. Chairman, ladies and

16 gentlemen of the Committee, just to review, this is a

17 review and supplementation recommendation of General

18 Provisions No. 5 which dealt with federal enclaves.

19 The originally recommended proposal was

20 designed to retain to the state, the State of Maryland,

21 the greatest degree of jurisdiction permitted by Federal

1 law.

2 The State does have the right to prevent

3 rhe Federal government from acquiring exclusive juris-

4 diction over lands owned by the Federal government in the

5 State. There is now in the statutory code, Article 96,

6 section 47, substantially the same language as our General

7 Provision Recommendation No. 5. Adoption by this

8 Convention of this GP-5 would remove it from statutory

9 effect, would give it constitutional blessing where the

10 Legislature would no longer be free to repeal or make any

11 exception to the present rule except by Constitutional

12 amendment.

13 The General Assembly, if this recommendation is

14 adopted, could no longer cede exclusive state jurisdiction

15 to the Federal government.

16 At that stage there were some fine legal

17 points posed, and the Committee, it was suggested go back

18 and do a little more homework and make a supplementary

19 recommendation and report to the Committee of the Whole.

20 There was one question asked, what elements of

21 rights would this proposal allow the state to retain, and

1 these are set forth in our original recommendation of
2 November 13.
3 Among others, it would retain to the State the
4 rights and duties imposed under Maryland law, would retain
5 the standing to sue and be sued in Maryland courts,
6 including the service of civil and criminal process, and the
7 right of Maryland to impose and collect taxes.
8
9 At that stage of the proceedings, Amendment C,
10 Amendment No. 1, was offered by Delegates Storm and Jett.
11 Today you have had placed on your desks a supplementary
12 committee memorandum which I hope will answer many of the
13 questions that Delegate Sherbow and some of the other
14 learned legal lights of the Convention raised.
15 There are three basic procedures by which the
16 United States can acquire land in the State of Maryland.
17 One is by outright purchase. An excellent example of
18 this was of course the ten square miles acquired by the
19 Federal government in the District of Columbia. This gives
20 to the Federal government exclusive jurisdiction over all
21 the territory within the perimeter boundaries of such an

1 acquisition.

2 The second way, the United States may buy or
3 lease from an individual, not from the State but from an
4 individual, certain lands. In this case the State of
5 Maryland does retain all jurisdiction ex cept those which
6 would not be in conflict with the Federal government or
7 with the Federal use of the land acquired.

8 The third way, the United States, should all
9 else fail, might acquire land within the State of Maryland
10 by condemnation. At that stage it acquires only the
11 jurisdiction necessary, not exclusive jurisdiction.

12 What GP-5 does is to retain under the
13 Constitution of the State of Maryland all rights and
14 privileges that would be inherently natural to the State
15 of Maryland except those that are specifically given to
16 the United States Federal government, and this, I say, is
17 already set forth in Article 96, Section 47, in a statutory
18 way.

19 The adoption by this Convention of GP-5 would
20 give it constitutional status.

21 THE CHAIRMAN: Are there any questions?

1 Delegate Willoner.

2 DELEGATE WILLONER: Chairman Boyer, in this new
3 memorandum you indicate that on several occasions the
4 Legislature has passed specific acts to get around
5 Article 96, Section 47. I was wondering if your Committee
6 or staff people determined how many times that happened
7 and why did it happen so that we can know whether or not
8 it was a good idea that the Legislature had this power, or
9 whether it wasn't a good idea.

10 DELEGATE BOYER: Y es, prior to 1943, which I
11 believe was when Section 47 was adopted, Delegate Willoner,
12 just to give a little history of it, this had been operated
13 on sort of a piecemeal basis, and I believe my last pre-
14 sentation indicated a dozen or more specific instances
15 throughout the state where the United States government
16 had by statutory provision acquired certain lands.

17 Then in 1943 Article 96, Section 47, was adopted
18 which had a reservation which reserved to the State of
19 Maryland exclusive jurisdiction not inconsistent with the
20 Federal government and the Federal uses for which that
21 particular land had been acquired.

1 Now, since then there have been no grants to the
2 Federal government, to my knowledge, on a case by case
3 basis -- at least there has been none in any statutory
4 code. Section 47 was the one I just mentioned. Section 48
5 of the Code, Article 96, had a limitation as to exemption
6 of taxes, and Section 49 enumerated powers of counties and
7 municipal governments to participate in Federal projects,
8 which is sort of a blanket catch-all theory, and Section 50
9 was an agreement as to the powers of the local counties on
10 works of improvement.
11 I can think of no specific instance where the
12 state government has ceded any additional land to the
13 Federal government contrary to Section 47.
14 THE CHAIRMAN: Are there any further questions?
15 Delegate Koss.
16 DELEGATE KOSS: Chairman Boyer, under the terms
17 of GP-5 could you give us some idea of what effect this
18 might have, for instance, on the aid that is granted to
19 localities under impacted areas in terms of education,
20 and so on?
21 DELEGATE BOYER: Delegate Koss, I probably could

1 very well, but I must confess that a gentleman here much
2 more learned in this specific area than I would be Delegate
3 Storm.
4 THE CHAIRMAN: Delegate Storm, did you hear the
5 question of Delegate Koss?
6 DELEGATE STORM: I am sorry, I did not.
7 THE CHAIRMAN: Delegate Koss, would you restate
8 your question?
9 DELEGATE KOSS: I was just wondering what effect
10 the GP-5 or any amendment similar to it would have upon the
11 impacted aid that areas now get from the Federal government
12 because of the presence of Federal installations.
13 THE CHAIRMAN: Delegate Storm.
14 DELEGATE STORM: I think it would have no effect
15 on the monies received for educational purposes and in
16 lieu of local taxes, and so on.
17 Mr. Chairman, if I might mention one thing that
18 I discovered, I spoke with Mr. Edward Lazowska of the U. S.
19 Department of Justice, and he has had a lot of experience
20 in this. I checked with him to be sure that we would not be
21 running afoul of any possible Federal government objection,

1 and he did mention that Section 47 had not been clear to
2 him, and that was why Delegate Jett and I fixed up the
3 proposed amendment.
4 Mr. Lazowska said that it was because of his
5 confusion that two particular cessions have been made using
6 the old terms, like Delegate Willoner asked. One was the
7 Fort Dietrich cession, and the other was the National
8 Institutes of Health cession.
9 Mr. Lazowska had a suggested amendment to GP-5,
10 but then when we read him the Jett-Storm amendment, he
11 agreed that this would clear up any questions or objections
12 that the Federal government might have, and he also made a
13 suggestion which was incorporated into the suggested amend-
14 ment. I thought m aybe I had better correct that one
15 thing.
16 THE CHAIRMAN: Are there any other questions?
17 Delegate Pullen.
18 DELEGATE PULLEN: Mr. Chairman, I might be able
19 to help out in this matter, but I suggest that even what I
20 have to say should be rechecked, because I have been out
21 of the office connected with this for three years.

1 Impacted areas have nothing to do, if I am
2 correct, with people who live actually on government
3 property. It is only those areas surrounding that are
4 affected by people who work for the government, in part.
5 Furthermore, it does not affect, I think, those
6 communities which are operated by government agencies in
7 which money or funds are given in lieu of taxes. I think
8 that is correct, but Delegate Raley is a little concerned,
9 and I will let him raise his question. I don't think it
10 would affect this, but we had better check it.
11 THE CHAIRMAN: Delegate Raley.
12 DELEGATE RALEY: Mr. Chairman, I don't really
13 know what the point is but I heard Dr. Pullen say something,
14 and I do think the people that live aboard bases are
15 considered as part of the impact area money, because they
16 do go to school outside and that money is counted.
17 THE CHAIRMAN: Delegate Willis.
18 DELEGATE WILLIS: If I might speak to this point
19 that in fact today our county has been involved in this
20 since back in '52, and this proposed section, as I see
21 it, would have no effect either way on payments for impacted

1 areas.

2 THE CHAIRMAN: Are there any further questions?

3 Delegate Singer.

4 DELEGATE SINGER: I would like to know what

5 this section purports to do that is not already accomplished

6 by statute, if anything.

7 THE CHAIRMAN: Delegate Singer, I call to your

8 attention that the discussion now is on Amendment 1 to this

9 section. Do you have this in front of you?

10 DELEGATE SINGER: Yes, Mr. Chairman, I do, and

11 I have compared it with the existing statute. Part of it

12 is the same; part of it has been transposed.

13 THE CHAIRMAN: Your question is directed to

14 the amendment?

15 DELEGATE SINGER: Amendment No. 1.

16 THE CHAIRMAN: Delegate Boyer, do you want to

17 answer that, or do you want Delegate Storm?

18 DELEGATE BOYER: Since this is the Storm-Jett

19 amendment, I would prefer Delegate Storm to explain what

20 he intends here.

21 THE CHAIRMAN: Delegate Storm.

1 DELEGATE STORM: Mr. Chairman and Delegate
2 Singer, the idea back of this amendment is to recognize
3 the problem, that people on Federal enclaves have no state
4 government to serve them the way our Court of Appeals has
5 held in the Loeb case, and not only recognize it but to
6 adopt a uniform policy so that these people will have
7 state government, and to make it uniform as to all future
8 acts of cession while leaving flexibility to cooperate with
9 the Federal government to meet any special requirements.
10 If you would look over Article 96, you would
11 see that our approach has been an extremely haphazard
12 approach since 1791, Also, since Section 47 was adopted,
13 the Attorney General has ruled in the case of Dietrich, and
14 in the case of the National Institutes of Health, that
15 since 47 was not referred to in those acts of cession the
16 jurisdiction ceded in the case of Dietrich and NIH is more
17 exclusive than ever before, so the idea of having is in the
18 Constitution is to adopt a policy which says that we will
19 treat these people the same as other people living in
20 Maryland are treated.
21 THE CHAIRMAN: Delegate Singer.

1 DELEGATE SINGER: Delegate Storm, my
2 question, though, was the difference in language between
3 your amendment and the present statute -- does it accomplish
4 any difference other than constitutionalizing it?
5 THE CHAIRMAN: Delegate Storm.
6 DELEGATE STORM: It constitutionalizes it
7 and makes it applicable to all future acts of cession
8 regardless of how they are worded. You see, the two
9 acts of cession passed since that time, since that section
10 was adopted as a law by the General Assembly, have been
11 interpreted to mean that more exclusive jurisdiction was
12 given in those two cases than in any previous cases.
13 THE CHAIRMAN: Delegate Singer.
14 DELEGATE SINGER: But looking ahead, what
15 we are doing is elevating the statute, then, into a
16 consitutional principle without changing any of the intent
17 of the statute itself, as I read it.
18 THE CHAIRMAN: Delegate Storm.
19 DELEGATE STORM: That is right to a certain
20 extent, but as a statute, a later statute passed takes
21 precedence over it as a constitutional provision. Then if

1 any change is made,and it leaves room for change, the change
2 will be made knowing what the change is, knowing that it is
3 required by the Federal Government and the state agreeing
4 to it.
5 THE CHAIRMAN: Any other questions?
6 Delegate Koss.
7 DELEGATE KOSS: Delegate Boyer, I am certainly
8 very sympathetic toward extending the rights and privileges
9 of citizenship to people who live on federal enclaves.
10 What implications does this have should, for
11 instance, the national government establish a very desirable
12 national park, like Assateague, or anything like that?
13 Would this language require that the state
14 assume policing powers within that park?
15 THE CHAIRMAN: Delegate Boyer.
16 DELEGATE BOYER: No, it is my understanding that
17 if this GP-5 is adopted in the constitution that the state
18 will reserve to itself all the inherent powers that it now
19 possesses save and excepting those specifically deeded
20 to the Federal Government for any specific purpose, not
21 a general exclusive jurisdiction. For instance, Assateague

1 deeded for a federal game reserve or anything like that,
2 or a national park, this would be the sum and substance
3 of the deed given to the Federal Government, it would be
4 for those specific purposes.
5 The State of Maryland would then retain to itself
6 all other privileges and powers that the state possesses
7 to the rest of the state.
8 THE CHAIRMAN: Delegate Koss.
9 DELEGATE KOSS: How about the police power?
10 DELEGATE BOYER: The police power would be
11 retained to the state, unless it would be in conflict with
12 any federal law, which of course would have paramount
13 jurisdiction over it.
14 THE CHAIRMAN: Any other questions?
15 Delegate Henderson.
16 DELEGATE HENDERSON: Do I understand that you
17 are in accord with the amendment rather than the Committee
18 draft?
19 THE CHAIRMAN: Delegate Boyer.
20 DELEGATE BOYER: The Committee draft was presented
21 to the Committee of the Whole, and since then, after we

1 presented it, the amendment was introduced on the floor.
2 I personally -- and I am speaking personally now, not neces-
3 sarily for the Committee -- I personally would yield to the
4 more learned opinions that we have uncovered by legal
5 staff and by Delegate Storm's investigations that perhaps
6 the amendment does cover the intent of the Committee a
7 little more clearly and succinctly.
8 THE CHAIRMAN: Delegate Henderson.
9 DELEGATE HENDERSON: It just seems to me that the
10 amendment that has been approved by the federal authorities,
11 as Delegate Storm stated, seems to cover a little more
12 ground because it attempts, I believe, by one of the
13 sentences there, to state that the state is reserving these
14 rights on land heretofore conveyed to the federal government
15 as well as hereafter as the Committee amendment states, to
16 the extent that such reservation is not inconsistent with
17 federal purposes, and so forth.
18 THE CHAIRMAN: Delegate Boyer.
19 DELEGATE BOYER: That is probably true,
20 Delegate Henderson.
21 DELEGATE HENDERSON: It just struck me that it

1 was more comprehensive probably than the committee and I
2 just wanted to know how the committee felt about it.
3 DELEGATE BOYER: The General Provisions Committee
4 has never considered the amendment. We had not seen it
5 until we came into the Committee of the Whole, like you.
6 THE CHAIRMAN: Are there any other questions of
7 the Committee Chairman?
8 Delegate Willoner.
9 DELEGATE WILLONER: Mr. Chairman, I thought
10 this question was answered in one of the other questions,
11 and then we got into a debate back here, and that is would
12 the legislature in the future have the power to cede this
13 jurisdiction to the federal government if it chose to under
14 this language of the amendment?
15 DELEGATE BOYER: The State of Maryland, of
16 course, would not be handcuffed or prevented from ceding
17 any future land to the federal government. What this
18 does is prevent the General Assembly from giving any future
19 exclusive jurisdiction to any further cessions of state
20 land.
21 THE CHAIRMAN: Delegate Willoner.

1 DELEGATE WILLONER: Then it does prevent them
2 from giving exclusive jurisdiction.
3 DELEGATE BOYER: Yes.
4 DELEGATE WILLONER: But they can give whatever
5 jurisdiction they want, something less than exclusive.
6 DELEGATE BOYER: That is true, just like they
7 can do it now under statutory fiat.
8 THE CHAIRMAN: Are there any other questions?
9 (There was no response.)
10 THE CHAIRMAN: The Chair hears none.
11 Delegate Boyer, if you will return to your seat
12 we will consider further Amendment No. 1.
13 Amendment No. 1 was distributed several days
14 ago. Do all Delegates have a copy? The Pages will
15 please distribute a copy of Amendment 1 to any delegates
16 who do not have it.
17 This was the amendment marked C by Delegates
18 Storm and Jett.
19 Delegate Storm heretofore presented the amendment
20 and explained it and debated in favor of it.
21 Is there any further discussion?

1 Delegate Scanlan.

2 DELEGATE SCANLAN: I rise to oppose Amendment

3 No. 1, and then, if that fails, to oppose the commission

4 recommendation in this area.

5 In his explanation of the committee proposal,

6 the chairman candidly admitted that the committee proposal

7 was the same as Section 46 of Article 96 of the present

8 code.

9 Now, Mr. Storm's amendment I think is even more

10 closely in tune with that article, but in either event both

11 are unnecessary.

12 The abuses that have occurred in this area are

13 not, as has been suggested, in the General Assembly of

14 Maryland being less than vigilant and seeing to it that when

15 it cedes land it adheres to Article 96, Section 46 --

16 the abuses, and I guess that is an unfair word,the

17 difficulties or injustices that have occurred are because

18 of the failure of the General Assembly to fill the gaps

19 created by certain interpretations of the court of appeals

20 which held that a resident on a federal reservation did

21 not have the necessary residence requirements to sue for

1 divorce.

2 The General Assembly plugged that hole by a

3 statute. It is found in Article 16. I don't know the

4 precise section, although I could give it to you.

5 Similarly, the General Assembly has plugged the

6 area of permitting adoptions to be brought by residents of

7 federal enclaves. The major problem, which was illustrated

8 in a case decided back in 1963 was the claim on the

9 part of residents of the federal enclaves they should vote

10 in federal elections. The court of appeals correctly

11 noted that the legislature had not successfully plugged

12 this void, although various legislation to that end had been

13 introduced in the General Assembly but had not passed.

14 The court noted there was an opinion of the attorney

15 general raising the query as to whether they could plug

16 that void for two reasons. It involved the Perry Point

17 situation, and the legislation about which the court of

18 appeals was commenting was legislation which would have

19 given the franchise rights strictly and only for the

20 residents,the federal residents of Perry Point, and

21 raised the question of possible discrimination vis-a-vis

1 the residents of other federal enclaves.

2 Secondly, there was some thought that possibly

3 in view of the jurisdictional requirement of residents

4 for the franchise found in Article 1, Section 1 of the

5 constitution, a constitutional amendment might be required.

6 That void has been plugged or is about to be plugged, I

7 hope, by the proposal adopted by the Committee of the Whole

8 with respect to the report of the Committee on Suffrages

9 and Elections in which the right is given to the residents

10 of the federal enclave.

11 THE CHAIRMAN: You have one last minute.

12 DELEGATE SCANLAN: In short, this provision

13 is entirely statutory. There is not a single state in

14 the union that has a similar provision in its constitution.

15 Finally, there is the point raised by Judge

16 Sherbow. If we freeze it into the constitution, there

17 may come a time when we might regret it. The legislature

18 would lack the flexibility in order to enter into

19 negotiations by which we would acquire a much desired federal

20 facility.

21 I point to the situation where the federal

1 government in that case, although it is unlikely that
2 they are going to do so, might insist upon retaining more
3 jurisdiction than they usually insist upon. If we had
4 this provision in the constitution there would be grave
5 doubt as to whether we would consummate the transaction
6 however desirable it might be for the people of the state.
7 THE CHAIRMAN: Does any delegate desire to speak
8 in favor?
9 Delegate Storm.
10 DELEGATE STORM: Mr. Chairman, this must be done
11 by constitutional amendment or provision rather than by
12 statute. Both the legislature of Maryland and the
13 Congress of the United States have tried through statutes
14 to accomplish this purpose. In 40 U. S. Code Annotated
15 255 the Congress stated, "It is conclusively presumed that
16 jurisdiction ceded from the states is not exclusive
17 jurisdiction unless otherwise stated", but still after
18 that had been passed, because of the opinion of the attorney
19 from the Department of Justice it was necessary for them
20 to ask for exclusive jurisdiction in the Dietrick and
21 N.I.H. cases.

1 Now, my learned friend from Montgomery County
2 states that other state constitutions have no provisions
3 like this. That is true, but most of them have provisions
4 regarding their relations with the federal government,
5 and please note this particular difference between Maryland
6 and many of the western states. Every bit of the land which
7 the federal government owns or has jurisdiction over has
8 been ceded to it from the state of Maryland. Many of
9 the western states have land only which has been ceded
10 to them from the federal government. Montana has a
11 provision authorizing the federal government to exercise
12 exclusive legislation over military reservations with the
13 same effect as if they had purchased with the reservations
14 and consent of the legislature.
15 Washington, South Dakota and Texas have
16 constitutional provisions similar to our old acts of cession.
17 Minnesota has a constitutional provision that persons
18 residing on Indian reservations may enjoy the rights and
19 privileges of citizens and be subject to taxation.
20 I think it might be helpful to understand what
21 I am driving at and what this entire section is driving

1 at if we have time to look at the last act of cession where
2 we specifically provided for people living on the federal
3 reservation. This was in 1791.
4 Since that time, when the federal government has
5 taken land they have not thought, and the state has not
6 thought that people would be living there without state laws
7 and jurisdiction.
8 THE CHAIRMAN: You have one last minute.
9 DELEGATE STORM: Notice what the legislature
10 said at the time the district was given over. It said
11 it obviously did not expect Congress to exercise the exclusive
12 legislation and did not require them to do so. In fact,
13 the law said there may be many temporary provisions, like
14 our constitution, temporary provisions will be necessary,
15 and then it went on and provided for various things that
16 would be necessary to properly provide for government for
17 those people in the district until 11 years later when the
18 Congress finally did assume jurisdiction and passed the
19 organic act of 1801 and actually provided government for
20 the residents of the district.
21 THE CHAIRMAN: Your time has expired.

1 Does any other delegate desire to speak in
2 opposition to the amendment? Does any other delegate
3 desire to speak in favor of the amendment? Are you ready
4 for the question?
5 The Clerk will ring the quorum bell.
6 Delegate Storm.
7 DELEGATE STORM: Mr. Chairman, I ask -- if
8 this is possible -- unanimous consent to say just two more
9 thoughts.
10 THE CHAIRMAN: You have the privilege of the
11 floor again, Delegate Storm. You just can't talk more
12 than three minutes at any one time. You may proceed.
13 DELEGATE STORM: Thank you.
14 I would just like to mention this. We have
15 left it to the legislature in the past and they have been
16 unable to do it, either the federal or the state legislature.
17 It has been a mess. Even when they took in Indian Head
18 they said "We are going to give them the rights that all
19 the people in Annapolis at the Naval Academy have", but those
20 people have no rights.
21 If we leave this to statute, the legislature

1 would have to review each and every residence requirement
2 and all of their laws, and that specific statute specifically
3 giving or denying rights as residents.
4 Now, I submit there is no reason to discriminate
5 against these people, since we have already given them the
6 right to vote, we have given them the right to divorce,
7 although we don't require them to actually reside in Maryland
8 in order to get that right. We have given them the right to
9 be adopted, but why leave the question as to marriage, death
10 and birth certificates, as to jury duty, as to wills and
11 intestacy proceedings. All of these things are unanswered
12 and would have to be answered specifically by the legislature
13 if we leave it out of the constitution.
14 Why can't these people be treated exactly like
15 their neighbors and fellow taxpayers? Why not give them the
16 benefit of being citizens and residents of Maryland?
17 THE CHAIRMAN: Delegate Macdonald.
18 DELEGATE MACDONALD: A parliamentary inquiry,
19 Mr. Chairman.
20 THE CHAIRMAN: State the inquiry.
21 DELEGATE MACDONALD: Has Amendment No. 1 been

1 accepted by the Committee?

2 THE CHAIRMAN: It has not. The question now be-

3 fore you is on the adoption -- by the Committee of the Whole

4 or do you mean the Committee on General Provisions?

5 DELEGATE MACDONALD: I had thought, I could be

6 mistaken, that Amendment 1 had been accepted as a substitute

7 by the Committee on General Provisions.

8 THE CHAIRMAN: No. Delegate Boyer stated that

9 he personally favored the amendment but that he could

10 not speak for the Committee.

11 DELEGATE MACDONALD: After this vote we will then

12 be voting on the committee's recommendation?

13 THE CHAIRMAN: The question now before you is

14 the adoption of Amendment 1. If Amendment No. 1 is adopted,

15 then you will vote on the approval of that as the sub-

16 stitution for the committee recommendation. If Amendment

17 No. 1 is rejected, then you will be voting on the committee

18 recommendation as submitted.

19 Delegate Bennett.

1-21

1 THE CHAIRMAN: Mr. Bennett.

2 DELEGATE BENNETT: Mr. Chairman, may I ask

3 Delegate Storm one question?

4 THE CHAIRMAN: Delegate Storm, would you take

5 the floor to answer a question?

6 Delegate Bennett.

7 DELEGATE BENNETT: What worries me, Delegate

8 Storm, is that this section beginning on line 18 where a

9 specific act of Congress is required to make these

10 exceptions, knowing how difficult it is sometimes,and how

11 Congress gets involved in small matters, and there is

12 competition and jealousy for certain government facilities,

13 would you be willing to accept an amendment where, instead

14 of saying "specifically required by an act of Congress", say

15 "expect to such extent as may be specifically required by

16 the President of the United States."

17 THE CHAIRMAN: D elegate Storm?

18 DELEGATE STORM: Delegate Bennett, I might say

19 that I didn't have this phrase in this section when it was

20 first drawn. This phrase was specifically suggested by

21 the Department of Justice attorney who went over this,and he

1 interprets this -- and I believe that he is right -- that
2 under this, acts of Congress which authorize various federal
3 agencies to acquire jurisdiction and to acquire land, would
4 be able to do so und er this amendment. In other words, the
5 act of Congress, many acts of Congress have been passed in the
6 past which require executive action or action on the part
7 of boards, and agencies, and he was the one who suggested
8 that this be put into the provision so as to make it very
9 clear that Congress could ask for it, or the Department of
10 the Army, or almost any federal agency could ask for
11 a particular amount of jurisdiction.
12 THE CHAIRMAN: Delegate Storm, I take it your
13 answer to D elegate Bennett's question is "no".
14 DELEGATE STORM: Yes.
15 THE CHAIRMAN: Delegate Bennett.
16 DELEGATE BENNETT: Delegate Storm, you were
17 speaking of Mr. Ladowski?
18 DELEGATE STORM: Yes.
19 DELEGATE BENNETT: Having had some problems
20 relating to acquisition of land, I know how sometimes
21 distinguished attorneys can be mistaken, and I still believe

1 that if you could put that discretion, if necessary, also
2 in the President, it would facilitate the taking of those
3 lands at a later date.
4 I think, as Delegate Scanlan points out, this has
5 potentialities for blocking the acquisition or the location of
6 certain federal properties in Maryland, and I simply want
7 to make it as easy as I can to do so.
8 We in Montgomery County have some very desirable
9 sections, and we don't want to run the risk of losing any
10 big atomic energy plant out there.
11 THE CHAIRMAN: Delegate Storm.
12 DELEGATE STORM: That is the reason this particular
13 clause was put in, so that the Department of Justice would
14 give absolute approval, not officially, because they don't
15 want to interfere with our Constitutional Convention, but
16 they give absolute approval to this as being the means to
17 allow the President or other members of the executive branch
18 of government to act under Acts of Congress which have been
19 passed requiring more exclusive jurisdiction than would
20 otherwise be granted.
21 THE CHAIRMAN: Are you ready for the question?

1 The Clerk will ring the quorum bell.

2 The question now arises on adoption of Amendment

3 1. It is not on the recommendation. If the amendment is

4 ad opted, the Chair will submit to you for adoption the

5 committee recommendation as amended. If amendment No. 1

6 is rejected,the Chair will submit to you the committee

7 recommendation in its original form.

8 The vote is now only on the amendment. A vote

9 Aye is a vote in favor of the amendment. A vote No is a

10 vote against.

11 Cast your vote.

12 Has every delegate voted? Does any delegate

13 desire to change his vote?

14 The Clerk will record the vote.

15 There being 48 votes in the affirmative,and 58

16 in the negative, the amendment is lost.

17 The question now arises on the approval of

18 Committee Recommendation GP-5. Are you ready for the

19 question?

20 The question arises on the approval of Committee

21 Recommendation GP-5 as originally submitted. A vote Aye

1 is a vote in favor of approval of the recommendation. A
2 vote No is a vote against the recommendation.
3 Cast your vote.
4 Has every delegate voted? Does any delegate
5 desire to change his vote?
6 The Clerk will record the vote.
7 There being 38 votes in the affirmative,and 65
8 in the negative, the motion is lost and Committee
9 Recommendation GP-5 is not approved.
10 The Chair recognizes Delegate Powers.
11 DELEGATE POWERS: Mr. Chairman, I move that
12 the Committee of the Whole rise and report its rejection
13 of Committee Recommendation No. GP-5.
14 (The motion was duly seconded)
15 THE CHAIRMAN: All in favor signify by saying
16 Aye. Contrary No. The Ayes have it, and it is so ordered.
17 (Whereupon, at 4:50 o'clock, p.m., the Committee
18 of the Whole rose,and the Convention reconvened.)
19 (The mace was replaced by the Sergeant-at-Arms)
20 THE PRESIDENT: The convention will please come
21 to order.

1 On behalf of the Committee of the Whole, the
2 Chair reports that the Committee of the Whole has considered
3 Committee Recommendation GP-5, and has voted not to approve
4 the Committee recommendation.
5 Lest I forget it, I would like to take the oppor-
6 tunity to read to you a message received this afternoon by
7 telephone from Mrs. Clark.
8 Senator Clark would like to convey his thanks to
9 the delegates for the basket of fruit which he received this
10 morning. He was very pleased. He feels very much better,
11 and wishes everyone a very merry Christmas. (Applause).
12 We now resume consideration of Report No. SD-7
13 of the Committee on Style, Drafting and Arrangement with
14 respect to Committee Recommendation LG-1.
15 The question and answer period has been concluded.
16 We are now considering the recommendation solely for purposes
17 of style. Any amendments with respect to questions of style
18 only will be considered at this time,and then after we
19 have been through the entire recommendation we will go
20 back through it to consider amendments as to substance.
21 Before doing that, however, the Chair would like

1 to, not rise, but continue standing to a question of personal
2 privilege and announce to you that this is the tenth wedding
3 anniversary of the Secretary of the Convention, Mr. Robert
4 Martineau and his wife,and I ask you to join me in extending
5 to him very hearty congratulations. He is standing in the
6 back of the room. (Applause)
7 THE PRESIDENT: For what purpose does Delegate
8 Case arise?
9 DELEGATE CASE: A point of parliementary inquiry,
10 Mr. President.
11 THE PRESIDENT: State the inquiry.
12 DELEGATE CASE: At the appropriate time I should
13 like to move that Section 7.04 be returned to the Committee on
14 Style for the purpose of taking into consid eration the
15 somewhat lengthy colloquy that you, the Chairm an, Delegate
16 Sherbow and I had with respect to that matter earlier today
17 so that the question can be presented squarely as to whether
18 or not the taxing powers should be left at this point, whether
19 they would be in a separate section dealing with taxation,and
20 so on.
21 The question that I wish to direct to your attention

1 is whether or not this is a matter of style, and therefore
2 the motion would lie as we go through now, or is it a matter
3 of substance, or can't I do it at all?
4 THE PRESIDENT: No, you can't do it. It is not
5 really a matter of style, but rather of arrangement.
6 I suggest to you not because it is absolutely
7 necessary, but because I think we would make better progress,
8 that we defer it until we have been through the Committee
9 recommendation section by section to make all the amendments
10 as to style.
11 I make that suggestion because I doubt very much
12 that we will conclude this afternoon consideration of the
13 entire recommendation, and the committee could consider this
14 without a formal referral.
15 The Chair will, however, recognize you before any
16 final action is taken.
17 The Chair has an amendment to Section 7.01.
18 Delegate Chabot, on your amendment BF, do you desire to
19 offer it?
20 DELEGATE CHABOT: Yes,sir.
21 THE PRESIDENT: Will the pages please distribute

1 Amendment BF.

2 This will be amendment No. 1. The Clerk will

3 read the amendment.

4 MR. QUILLEN: Amendment No. 1, as amended by

5 Report No. S&D-7 to Committee Recommendation No. LG-1, by

6 Delegate Chabot.

7 On page 1, Section 7.01, Establishment of Counties

8 in line 23 strike out the following words: "In this

9 Constitution, county"; and insert in lieu thereof the

10 following: "County".

11 THE PRESIDENT: The amendment is submitted by

12 Delegate Chabot. Is there a second.

13 (The amendment was duly seconded)

14 THE PRESIDENT: The amendment is seconded by

15 Delegate Case.

16 The Chair recognizes Delegate Chabot to speak

17 to the amendment.

18 DELEGATE CHABOT: This amendment arose out of the

19 colloquy that we had a bit earlier this afternoon,and is

20 merely intended to conform the usage in 7.01 where we have

21 part of the original definition with the usage that we have

1 in sections 7.05 and 7.08 where the words "in this
2 Constitution" do not appear.
3 The only objective sought to be obtained is to
4 make sure when the courts come to construe these sections they
5 don't think we had a different meaning in each of these
6 three places, because we used the phrase "in this Constitution"
7 in one place,and didn't use it in the other two.
8 THE PRESIDENT: Are there any questions of the
9 sponsor of the amendment?
10 Delegate Penniman.
11 DELEGATE PENNIMAN: Mr. President, I see no
12 reason to oppose this proposal as long as it makes all of
13 them the same. It makes no difference whether one puts
14 the word in or not.
15 THE PRESIDENT: Any discussion? Are you ready
16 for the question.
17 Delegate Ulrich.
18 DELEGATE ULRICH: I think the reason for this is
19 that Baltimore City is going to be considered a county, and
20 thus having 24 counties, or deleting it from the first section
21 may confuse this issue.

1 THE PRESIDENT: I don't think so, if I understand
2 the Chairman of the Committee, Delegate Ulrich, he indicated
3 that he thought that with or without the words, Baltimore
4 City would be regarded as a county wherever the word "county"
5 is used anywhere in the Constituion.
6 Is that correct, Delegate Penniman?
7 DELEGATE PENNIMAN: That is correct.
8 THE PRESID ENT: Any further discussion? Are
9 you ready for the question?
10 The Clerk will ring the quorum bell.
11 The question arises on the adoption of Amendment
12 no. 1. A vote Aye is a vote in favor of the amendment. A
13 vote No is a vote against.
14 Cast your vote.
15 Has every delegate voted? Does any delegate
16 desire to change his vote?
17 The Clerk will record the vote.
18 There being 84 votes in the affirmative, and 10
19 in the negative, the motion is c arried,and the amendment
20 is adopted.
21 The Chair has no other amendments as to Section 7.01.

1 Are there any --- Delegate Sherbow?

2 DELEGATE SHERBOW: A point of personal privilege.

3 THE PRESIDENT: State the privilege.

4 DELEGATE SHERBOW: Members of my family have been

5 here on occasions. Mrs. Sherbow has been here a number of

6 times,and it has dawned on me that I have never asked for

7 a welcome. She is here in the gallery with four of our

8 grandchildren: Geoffrey, Julie, Jill and Molly, and I

9 hope you will give them all a warm welcome. (Applause)

10 THE PRESIDENT: The next item under consideration

11 is 7.02. The Chair has no amendments. Are there any? The

12 Chair hears none.

13 The next section for consideration is Section 7.03.

14 The Chair has no amendments. Are there any? The Chair hears

15 none.

16 The next section for consideration is Section 7.04.

17 Delegate Moser, do you desire to offer your

18 amendment A?

19 DELEGATE MOSER: Yes, sir; I do.

20 THE PRESIDENT: Pages will please distribute

21 the amendment A.

1 Amendment A will be Amendment No. 2. The Clerk
2 will read the amendment.
3 MR. QUILLEN: Amendment No. 2 as amended by
4 Report No. S&D-7 to Committee Recommendation No. LG-1,
5 by Delegates Moser, Barrick, Borom, Boyles, Bryson,
6 Eckenrode, Gallagher, Grant, Hopkins, Leitzel, Needle,
7 Neumann, Ulrich, Wagandt and Winslow:
8 On page 3, Section 7.04 Powers of Counties, in
9 line 11 after the word "exercise" add the word "only";
10 and in line 12 strike out the words "by law and"
11 and insert in lieu thereof the following words:
12 "by the General Assembly by law but".
13 THE PRESIDENT: The amendment has been submitted
14 by Delegate Moser and seconded by the other co-sponsors.
15 The Chair recognizes Delegate Moser.
16 DELEGATE MOSER: Mr. President,this amendment
17 is purely one of style to make absolutely crystal clear
18 that in view of the elimination by style in line 4 of the
19 words "and power to tax", that nevertheless a county may
20 exercise only those taxing powers granted to the "by", and
21 wehave added "the General Assembly by law", and to have the

1 last lines read better, we have added the word "but". It is
2 merely to make clear the retention of the taxing power with
3 respect to counties in the General Assembly.
4 THE PRESIDENT: Are there any questions of
5 the sponsor of the amendment?
6 The Chair recognizes Delegate Penniman.
7 DELEGATE PENNIMAN: Mr. President, I have no
8 objection to these changes.
9 THE PRESIDENT: Any further discussion? Are you
10 ready for the question?
11 The Clerk will ring the quorum bell.
12 The question arises on the adoption of Amendment
13 No. 2. A vote Aye is a vote in favor of the amendment;
14 a vote No is a vote against.
15 Cast your vote.
16 Has every delegate voted? Does any delegat e
17 desire to change his vote?
18 The Clerk will record the vote.
19 There having been 93 votes in the affirmative, and
20 8 in the negative, the motion is carried, and the amendment
21 is adopted.

1 Delegate Hanson, the Chair would understand
2 your amendment BC to be an amendment of substance, and not
3 of style, is that correct?
4 DELEGATE HANSON : That is correct.
5 THE PRESIDENT: Very well.
6 Are there any other amendments to section 7.04?
7 THE PRESIDENT: Delegate Winslow.
8 DELEGATE WINSLOW: Mr. Chairman, I beg your
9 indulgence, the committee moved so fast that it got past
10 7.03 without my getting to my feet.
11 May I ask that you return to it?
12 THE PRESIDENT: Certainly.
13 DELEGATE WINSLOW: In agreement with my question
14 put to Chairman Penniman earlier, I propose that in line 48
15 after the word "provided" the word "either" be inserted in
16 order that it may make clear that the instrument of
17 government or the General Assembly by law are alternative
18 methods of providing additional means of amendment.
19 On line 48 after the word "provided", insert
20 the word "either".
21 THE PRESIDENT: The amendment has not been printed

1 Delegate Winslow?

2 DELEGATE WINSLOW: I thought this was a change of

3 style, and it didn't need to be printed. I'm sorry.

4 THE PRESIDENT: It should be. Is there any

5 objection to considering the amendment notwithstanding the

6 amendment is not printed? The amendment would be in line 48

7 on page 2 after the word "provided", to insert the word

8 "either".

9 The Chair hears no objection. The amendment

10 will be considered.

11 This is Amendment No. 3, Delegate Winslow, if

12 you would ask Mr. Benson to prepare it for us.

13 DELEGATE PENNIMAN: I indicated in response to

14 a question that this was the meaning of it as it stands.

15 I see no objection to inserting the word.

16 THE PRESIDENT: Is there any discussion? Are

17 you ready for the question?

18 The Clerk will ring the quorum bell. The question

19 arises on the adoption of amendment No. 3 to insert the

20 word "either" after the word "provided" on line 48, page 2.

21 A vote Aye is a vote in favor of the amendment. A vote No

1 is a vote against.

2 Cast your vote.

3 Has every delegate voted? Does any delegate

4 desire to change his vote?

5 The Clerk will record the vote.

6 There being 90 votes in the affirmative and 11

7 in the negative, the motion is carried, and the amendment

8 is adopted.

9 Are there any other amendments to either

10 section 7.02 or 7.04? The Chair hears none.

11 The Chair has no amendments to section 7.05. Are

12 there any? The Chair hears none.

13 The Chair has no amendments to section 7.06.

14 Are there any?

15 Delegate Needle.

16 DELEGATE NEEDLE: Mr. Chairman, I have an amend-

17 ment to the title of Section 7.06, which is not printed.

18 THE PRESIDENT: State the amendment.

19 DELEGATE NEEDLE: It would insert the words which

20 are already stricken "new municipal corporations and",

21 leaving stricken the word "civil", so that the title would

1 read "New municipal corporations and intracounty
2 governmental units."
3 THE PRESIDENT: I think the proper form of your
4 amendment since the deletion is a proposed amendment would
5 be -- well, no, I thought we could do it by not comparing,
6 but there are other matters in the amendment.
7 I think you could do it by a motion that the
8 Committee of the Whole will not concur in so much of the
9 amendment.proposed by the committee as to delete from
10 line 1 "new municipal corporations and". Is that your
11 motion?
12 DELEGATE NEEDLE: I so move.
13 THE PRESIDENT: Amendment 4 is the motion to
14 d elete from line 1 on page 4 so much of the amendment proposed
15 by the committee as would delete the words "new municipal
16 corporations and". Is there any objection to considering
17 the motion notwithstanding the fact that it is not printed?
18 DELEGATE JAMES: How about the word "civil" on
19 line 2?
20 THE PRESIDENT: He did not d esire to restore
21 the word "civil". Is that correct?

1 DELEGATE NEEDLE: Yes.

2 THE PRESIDENT: Is there any objection?

3 DELEGATE JAMES: No.

4 THE PRESIDENT: Is there any discussion?

5 DELEGATE JAMES: No.

6 THE PRESIDENT: Delegate Penniman.

7 DELEGATE PENNIMAN: I think that the words
8 "intracounty governmental units" almost certainly cover it,
9 but I hold no strong grievance on reinsertion of the words
10 "no municipal corporations and".

11 THE PRESIDENT: Very well.

12 Delegate Wagandt.

13 DELEGATE WAGANDT: Would it be more correct to
14 say "new municipal corporations and other intracounty
15 governmental units", seeing that municipal corporations are
16 intracounty governmental county units?

17 I don't know that it is absolutely necessary. It
18 is sufficient to state what we have: "municipal corporations
19 and intracounty governmental units".

20 THE PRESIDENT: Delegate L. Taylor.

21 DELEGATE L. TAYLOR: I would like to ask

1 Delegate Needle a question.

2 Would it be more logical to put the intracounty

3 governmental units first and say intracounty governmental

4 units after new municipal corporations?

5 DELEGATE NEEDLE: I don't see that it makes very

6 much difference. The main purpose in it was so that it

7 would logically follow the title of the preceding section

8 and be for purposes of indexing as well, and I think that

9 it more logically would follow if "new municipal corporations"

10 were the first part of the title.

11 THE PRESIDENT: Delegate Lloyd Taylor.

12 DELEGATE L. TAYLOR: Doesn't the term "intracounty

13 governmental units" include the definition of municipal

14 corporations?

15 DELEGATE NEEDLE: Not necessarily. The local

16 government committee envisioned the possibility of other

17 types of civil units which we referred to.

18 THE PRESIDENT: I think his question was does

19 the term "intracounty governmental units" include

20 municipal corporations.

21 DELEGATE NEEDLE: It could and could not. There

1 are municipal corporations which cross county lines so
2 that this would be in addition to intracounty municipal
3 corporations.
4 THE PRESIDENT: Any further questions of the
5 sponsor?
6 Delegate Penniman, for the record, may the Chair
7 ask: Does the Committee on Style intend to have any
8 provision anywhere or in any other manner indicate that
9 captions to sections are not a part of the Constitution or
10 are a part of the Constitution?
11 DELEGATE PENNIMAN: We have sent around, as you
12 know, a note which indicates that it is not part of the
13 Constitution, and I presume that such a statement will be --
14 I am not quite sure where it will go, but certainly this
15 is the intention of the committee, that they not be intended
16 as a part of the Constitution.
17 It becomes too difficult as you know on many
18 of the sections to make the title fully descriptive of
19 what is below.
20 THE PRESIDENT: Is there any further discussion?
21 Are you ready for the question?

The Clerk will ring the quorum bell.

The question arises on the adoption of amendment No. 4 on the motion not to concur in the amendments of the committee to delete from line 1 the words "new municipal corporations and". A vote Aye is a vote in favor of the motion, and would not concur in the committee amendment. It would restore the words. A vote No is a vote against.

For what purpose does Delegate Mentzer rise?

DELEGATE MENTZER: Information.

Is it not true that these captions will be printed with the Constitution, but will have no legal force? We are not suggesting, are we, that they are not going to be printed in the Constitution?

THE PRESIDENT: No. I did not mean to suggest that in the question to Delegate Penniman. I was merely inquiring whether there would be some affirmative statement to carry out the policy heretofore announced by the committee to the effect that even though the captions were printed, they were not a part of the Constitution, and were not to have any effect in interpreting the Constitution.

1 Are you ready for the question? A vote Aye
2 would be a vote for the amendment which would be against
3 the committee amendment. It would restore the deleted
4 words in line 1, and a vote No is a vote against the motion.
5 Cast your vote.
6 Has every delegate voted? Does any delegate
7 desire to change his vote?
8 The Clerk will record the vote.
9 There being 54 votes in the affirmative, and
10 51 in the negative, the motion is carried, and the committee
11 amendment is not concurred in.
12 The deleted words from line 1 are restored.
13 Are there any other amemdments to section 7.06?
14 Delegate Needle.
15 DELEGATE NEEDLE: Mr Chairman, I move that the
16 committee amendment not be concurred in in that the word
17 "only" in line 10 should not be stricken, and the word "any"
18 in line 10 should not be inserted. So that line 10 ---
19 THE PRESIDENT: Is the amendment printed?
20 DELEGATE NEEDLE: No. It is not.
21 THE PRESIDENT: Is there any objection to the

1 consideration, notwithstanding the fact that it is not
2 printed, an amendment not to resotre -- that is, not to
3 concur in the committee's amendment to delete the ---
4 State it again for me, would you please, Delegate
5 Needle?
6 DELEGATE NEEDLE: That the word "only" in line
7 10 not be stricken, and the word "any" in line 10 not be
8 inserted, so that line 10 would read "only to procedures
9 and standards that --".
10 THE PRESIDENT: Is there any objection to
11 considering amendment 5, even though not printed, which
12 would restore to line 10 the word "only" and delete
13 from line 10 the word "any"?
14 Delegate Bennett.
15 DELEGATE BENNETT: If I may reserve the right
16 to object: Could I get an explanation of the reason for
17 this?
18 THE PRESIDENT: Delegate Needle.
19 DELEGATE NEEDLE: Most of the members of the
20 Local Government Committee this morning felt that there was
21 some question as to the meaning of this section since the

1 word "only" was stricken, and that it could conceivably appear
2 that a county might not have the authority to provide for
3 new municipal and intracounty governmental units until
4 standards and procedures are prescribed by general assembly.
5 That was not the intent of the Local Government Committee.
6 We intended for this not to be a mandatory provision, but
7 to be applicable only if the General Assembly did provide
8 such procedures and standards, and that is why we wrote the
9 word "only" in there, and that is why I wanted to have it
10 reinserted.
11 THE PRESIDENT: Is there any objection to
12 considering the amendment even though not printed? The
13 Chair hears none. Amendment 5 will be to restore to line
14 10 on page 4 the word "only", and to delete from line
15 10 on page 4 the word "any".
16 The Chair recognizes Delegate Penniman.
17 DELEGATE PENNIMAN: Mr. Chairman, I would be
18 opposed to this change. I do not think that it makes any
19 difference as to the relationship between the General
20 Assembly and the county by inserting it.
21 THE PRESIDENT: Delegate Moser.

DELEGATE MOSER: Mr. President, I wanted to make clear that I oppose this amendment too. I think that it is clear as style and drafting has set it up, because of the use of the word "any" which means, I think, "if any", and I don't think it is helped by the changes which are suggested unless we were to go back to the complete original language, but that is not what this amendment would do.

THE PRESIDENT: Delegate Carson.

DELEGATE CARSON: Mr. Chairman and ladies and gentlemen: I urge you to vote against the amendment. We have uniformly used this language not only in this section, but also if you will observe, on page 5 in line 11 and 12 of section 1.10, and we will also use the same language in the legislative article to which former section 7.06 of this article is now being transferred.

The words that Delegate Needle attempts to amend are works of art. They were carefully thought out and they will be used uniformly in this manner throughout the Constitution. I think they are clear. I think they are adequate, and I see no reason to change them.

THE PRESIDENT: Any further discussion?

1 Delegate Burdette.

2 DELEGATE BURDETTE: Mr. President, I want to

3 be absolutely certain, if I may, of the intent of the

4 committee.

5 I thought I got from -- I am speaking of the

6 substantive committee. I thought I got from Delegate

7 Needle the assertion that this is intended to be mandatory

8 that standards be set before action is taken, and from

9 the chairman that the standards are optional.

10 In my vote on the Committee on Style, I construed

11 the language to be optional.

12 THE PRESIDENT: I think both the sponsor of the

13 amendment and the chairman concurred that they both understand

14 it to be optional.

15 DELEGATE BURDETTE: In that case, Mr. President,

16 I very strongly urge that we vote against the proposed

17 amendment.

18 THE PRESIDENT: Any further discussion? Are

19 you ready for the question?

20 The Clerk will ring the quorum bell.

21 The questionarises on the adoption of amendment

1 5. A vote Aye is a vote in favor of the amendment. A vote
2 No is a vote against. The amendnent would be to restore
3 to line 10 on page 4 the word "only". A vote Aye is a
4 vote in favor of those changes. A vote No is a vote against.
5 Cast your vote.
6 Has every delegate voted? Does any delegate
7 desire to change his vote.
8 The Clerk will record the vote.
9 There being 12 votes in the affirmative and 91
10 in the negative, the motion is lost and the amendment is
11 rejected.
12 Mr. Needle, will you please have Mr. Benson
13 prepared the two amendments?
14 Are there any further amendments to Section 7.06?
15 The Chair hears none.
16 Section 7.07.
17 Delegate Moser, I take it that amendment H is
18 intended to be an amendment of style only?
19 DELEGATE MOSER: That is correct.
20 THE PRESIDENT: Will the pages please distribute
21 amendment H. This will be amendment No. 6. The Clerk

1 will read the amendment.

2 MR. QUILLEN: Amendment No. 6 as amended by

3 Report No. S&D-7 to Committee Recommendation No. LG-1,

4 by Delegates Moser, Carson, Clagett, Gullett, Neumann

5 and Sybert.

6 On page 4, section 7.07, Additional Powers of

7 Municipal Corporations in line 19 place a period after the

8 word "corporations"; and strike out the balance of this

9 line and all of line 20 and insert in lieu therof the follow-

10 ing: "Any additional powers granted by a county may be

11 withdrawby by it or by the General Assembly by law; any

12 additional powers granted by the General Assembly may be

13 withdrawn by it by law."

14 The amendment has been submitted to Delegate

15 Moser. It is seconded by the co-sponsors.

16 THE PRESIDENT: The Chair recognizes Delegate

17 Moser.

18 DELEGATE MOSER: Mr. President, this is the

19 amendment that was drafted in conjunction with Judge Sybert

20 to cure the problem which he saw in 7.07 as it was drafted.

21 As a matter of clarification, where we refer to General

1 Assembly by law, this is intended to mean public general
2 law, but in view of the explanation of the Chairman of
3 the Committee on Style, we did not insert public law here,
4 of course.
5 THE PRESIDENT: Very well.
6 Delegate Willoner.
7 DELEGATE WILLONER: How do you plan that the county
8 may be withdrawn by it? Any way it wants to?
9 THE PRESIDENT: Delegate Moser.
10 DELEGATE MOSER: Any way that it wants to. It
11 is supposed to be -- I see your point. You are suggesting
12 that the words "by law" be inserted there, is that correct?
13 DELEGATE WILLONER: It would seem to be better
14 language.
15 THE PRESIDENT: Delegate Moser.
16 DELEGATE MOSER: I would have no objection if
17 the other proposers would have no objection.
18 THE PRESIDENT: Is there any objection from the
19 other sponsors to changing the word "it" in line 7 to
20 the word "law".
21 The Chair hears none. The Chair will consider

1 the amendment so modified in the absence of objection.
2 Delegate Clagett.
3 DELEGATE CLAGETT: I don't believe that would do
4 it, because you would be repeating yourself. Because if
5 you simply use the words "withdrawn by law" it would include
6 "both by law of county or by General Assembly". Therefore
7 you would have to ---
8 THE PRESIDENT: You would have to say "be
9 withdrawn by the county by law." Is that what you are
10 saying?
11 DELEGATE MOSER: That was the same thing that I
12 was going to point out.
13 THE PRESIDENT: Very well, the amendment you
14 want to make is to substitute for the word "it" the words
15 "by county law"; is that correct?
16 DELEGATE MOSER: Yes, sir.
17 THE PRESIDENT: Is there any objection?
18 The Chair hears none. The amendment will be
19 so modified.
20 Delegate Penniman:
21 DELEGATE PENNIMAN: I have no objection to the

1 clarification, but could I ask the Chair if this would
2 come to the Committee on Style as one which it may consider
3 and possibly modify the words ---
4 THE PRESIDENT: The Chair is about to report
5 that we should probably adjourn as soon as the amendment
6 was acted upon.
7 In view of your comment, we will suspend further
8 consideration of this without acting upon it further. We
9 will give you an opportunity to review it and comment upon
10 it at the next session.
11 I want to adjourn a little earlier than planned
12 this evening because of the choral group which has very
13 kindly consented to come down and entertain us, and also
14 because all of you are very anxious to get away as
15 promptly as possible.
16 Therefore, I will suspend further consideration
17 of Committee Recommendation LG-1.
18 The Chair has a few announcements to make.
19 First, while it is fresh in the minds of all of us, let us
20 clear up what is apparently a little misunderstanding
21 as tothe procedure with respect to amendments on second

1 reading.

2 While we are planning to consider separately
3 amendments of style and amendments of substance, this
4 does not mean that the rule as to printing amendments is
5 not to be followed in both instances, even though the
6 same change may be very slight, and may be easily understood
7 without the printed amendment. Our experience has demonstra-
8 ted the absolute necessity of having a complete set of
9 printed amendments. It is the only safeguard to knowing
10 precisely what action has been taken either by the
11 Committee of the Whole or by the Convention, because those
12 are the official records with the Journal Clerk.

13 These will be printed in the Journal. The
14 importance of the printed amendment cannot be overemphasized
15 so will you please keep in mind that even though we
16 consider style changes first, even though the change may
17 appear to be very slight, such as to add or delete a
18 word, nevertheless the amendment should be printed.

19 So that you may check on what you have, may I
20 tell you that you should now have Committee of the Whole
21 reports No. 1 throough 29, inclusive. These have been

1 printed and distributed. It is important that you have
2 these because these and only these reports show you the
3 final action of the Committee of the Whole before it goes to
4 the Committee on Style.
5 Please note therefore Committee of the Whole
6 reports 1 through 29. If you do not have them, you can
7 get them from the bill room.
8 Secondly, you should have reports -- or before
9 I leave that, there are four other reports of the Committee
10 on Style -- I am sorry that the Committee of the Whole
11 mad e orally, which have not yet been printed; they are
12 the reports with respect to committee recommendations GP-11,
13 sections 10, 11 and 13 of the Committee Recommendation
14 R&P-2, Committee Recommendation GP-12, GP-12 and Committee
15 Recommendation 5. They are being printed. They will not
16 be available for you before you leave today.
17 In addition, you should have before you all
18 Committee on Style reports thus far made which are No.
19 S-1 through 8. Keep in mind that one was a report distributed
20 quite a long time ago and concerned itself only with
21 general style rules.

1 Reports of the Committee on Style with respect
2 to Committee recommendations are No. S-2 through, that is,
3 including G-8. They have all been printed. They have
4 all been distributed and you should have them.
5 The remaining ones which have not yet been
6 considered will be on the agenda for next Wednesday.
7 The Committee of Style report No. 8 has to do
8 with Committee Recommendation JB-1 which will be discussed
9 on Wednesday, and your amendments have to be available
10 three hours before the section begins Wednesday.
11 Any delegates who do not have it this afternoon,
12 please indicate ,and the pages will bring you a copy, that is
13 S&D-8 to which is attached the amendments to JB-1.
14 Today marks again the end of another period for
15 some of the pages. They all indicate to the President and
16 to the Chief Page that they consider the expiration of
17 their tour of duty here at the convention as almost a
18 calamity. Some have even asked if we could not speak to
19 the principals of their schools to have their terms
20 extended. I am sure that we on the other hand feel that
21 the services rendered by them has been exceptional. I

1 don't know what we would do without it, and I would like you
2 to now extend to the retiring pages not only our warmest
3 regards and best wishes, but also a very merry Christmas.
4 (Applause).
5 There are a few reports to be read across, Mr.
6 Clerk, Committee of the Whole report NO. 30. The Clerk
7 will read the report.
8 MR. QUILLEN: Report of the Committee of the
9 Whole No. 30. This report covers matters in general
10 order 24, Committee Recommendation GP-11.
11 A report on Committee Recommendation GP-11,
12 separation of powers.
13 THE PRESIDENT: This report does not contain a
14 recommendation which is approved, but rather one not
15 approved. It is therefore referred to the Committee on Calen-
16 dar, and Agenda.
17 Committee of the Whole report 31, the Clerk will
18 read the report.
19 MR. QUILLEN: Report of the Committee of the
20 Whole No. 31. This report covers matters in General Order
21 No. 19, Committee Recommendation R&P-2.

1 THE PRESIDENT: The report has heretofore
2 been referred to the Committee on Style, Drafting and
3 Arrangement.
4 Committee of the Whole Report 32. The
5 Clerk will read the report.
6 MR. QUILLEN: Report of the Committee of the
7 Whole No. 32. This report covers matters in General Order
8 No. 29, Committee Recommendation No. GP-12.
9 THE PRESIDENT: The report has heretofore been
10 referred to the Committee on Style.
11 All delegates present now who were not present
12 at roll call earlier this afternoon may indicate their
13 presence on supplemental roll call.
14 The Clerk will record the supplemental roll call.
15 As soon as we adjourn we will have the singing
16 by the boys' choir. I will ask you all to remain in your
17 seats if you will, please.
18 Are there any announcements to be made by
19 the Committee Chairmen.
20 Delegate Kiefer.
21 DELEGATE KIEFER: Mr. President, there will be a

1 very brief meeting of the Committee on Personal Rights
2 and Preamble for certain administrative matters immediately
3 after the choir singing.
4 THE PRESIDENT: Any other announcements? Delegate
5 Penniman.
6 DELEGATE PENNIMAN: Mr. President, there will
7 be a meeting of the Committee on Style at 7:30.
8 THE PRESIDENT: Any other announcements by
9 the Committee Chairmen?
10 Delegate Moser.
11 DELEGATE MOSER: There will be a meeting of the
12 Local Government Committee at 12 noon on Wednesday.
13 THE PRESIDENT: Any other announcements?
14 Any announcements by other delegates?
15 Before recognizing Delegate Powers to move to
16 adjourn, I would like to take this opportunity to wish
17 to every delegate and to all members of the staff the
18 very heartiest of wishes for a very happy, happy Christmas
19 and a very pleasant weekend -- a holiday well deserved.
20 The Chair recognizes Delegate Powers.
21 DELEGATE POWERS: Mr. Chairman, I move we adjourn

1 until 2 p.m. on Wednesday, December 27.

2 (The motion was duly seconded)

3 THE PRESIDENT: All in favor signify by saying

4 Aye. Contrary No. The Ayes have it, and it is so ordered.

5 (Whereupon, at 5:40 o'clock p.m., the Convention

6 adjourned, to reconvene Wednesday, December 27, 1967, at

7 2 o'clock p.m.)

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